



INCOME TAX MANUAL.

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INCOME TAX MANUAL

ISSUED BY AUTHORITY OF
THE GOVERNMENT OF INDIA

(*First Edition.*)



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1922

The statutory provisions relating to income-tax are contained in Parts I and II of this Manual. Part I contains the Income-tax Act and the relevant portion of the Finance Act, and Part II contains the rules made under the Act.

Part III contains instructions and notes designed to assist income-tax authorities in the determination of questions which are bound to arise in assessments under the new Act. These instructions and notes have no statutory force but income-tax authorities should conduct assessments in accordance with them until they are cancelled or amended, unless in any particular instance the Income-tax Commissioner should desire to suspend action on any particular instruction pending a representation to the Board of Inland Revenue.

Part IV contains selected rulings of the High Courts.

In the marginal references "R" means a rule in Part II, "S" a section of the Act in Part I, and "P" a paragraph in Part III of the Manual.

SIMLA; }
The 10th April 1922. }

G. G. SIM,
Member, Board of Inland Revenue.

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PART I.

INCOME-TAX ACT, 1922 (XI OF 1922).

ACT No. XI OF 1922.

An Act to consolidate and amend the law relating to Income-tax and Super-tax.

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Income-tax Act,
Short title, extent 1922.
and commencement.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions.

(3) It shall come into force on the first day of April, 1922.

2. In this Act, unless there is anything repugnant in the Definitions. subject or context,—

(1) “ agricultural income ” means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of Government as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii); .

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

P. 3.

(2) " assessee " means a person by whom Income-tax is payable;

(3) " Assistant Commissioner " means a person appointed to be an Assistant Commissioner of Income-tax under section 5;

(4) " business " includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(5) " Commissioner " means a person appointed to be a Commissioner of Income-tax under section 5;

(6) " company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act VI of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Board of Inland Revenue may, by general or special order, declare to be a company for the purposes of this Act;

(7) " Income-tax Officer " means a person appointed to be an Income-tax Officer under section 5;

(8) " Magistrate " means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government to try offences against this Act;

(9) " person " includes a Hindu undivided family;

(10) " prescribed " means prescribed by rules made under this Act;

P. 4.

(11) " previous year " means—

P. 5.

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made; or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up;

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression " previous year " as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or

(b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Board of Inland Revenue or by such authority as the Board may authorise in this behalf;

(12) " principal officer, " used with reference to a local authority or a company or any other public body or association, means—

P. 6, 7.

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or
 (b) any person connected with the authority, company body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) " public servant " has the same meaning as in the Indian Penal Code;

P. 8.

(14) " registered firm " means a firm constituted under an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered with the Income-tax Officer in the prescribed manner:

P. 9.

R. 2-6.

(15) " total income " means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16; and

P. 10.

(16) " unregistered firm " means a firm which is not a registered firm.

P. 9.

CHAPTER I.

CHARGE OF INCOME-TAX.

**P. 2, 10,
11, 12,
13, 14.** 3. Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any Charge of income-tax. rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, company, firm and Hindu undivided family.

**P. 12,
14, 15.** 4. (1) Save as hereinafter provided, this Act shall apply to Application of Act. all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing, or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

P. 14. (2) Profits and gains of a business accruing or arising without British India to a person resident in British India shall be deemed-to-be profits and gains of the year in which they are received or brought into British India, notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose.

Explanation.—Profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

**P. 16,
20, 57.** (3) This Act shall not apply to the following classes of income:—

- P. 17.** (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.
- P. 17.** (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- P. 7.** (iii) The income of local authorities.

P. 18,
19.

IX of 1897.
V of 1912.

(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies, or any Provident Insurance Society to which the Provident Insurance Societies Act, 1912, is, or, but for an exemption under that Act, would be, applicable.

(v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employé.

(viii) Agricultural income.

P. 18.

P. 20.

P. 21.

P. 2.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

CHAPTER II.

INCOME-TAX AUTHORITIES.

5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely :—

P. 22.

(a) a Board of Inland Revenue,

(b) Commissioners of Income-tax,

(c) Assistant Commissioners of Income-tax, and

(d) Income-tax Officers.

(2) The Board of Inland Revenue shall consist of one or more persons appointed by the Governor General in Council.

(3) There shall be a Commissioner of Income-tax for each province who shall be appointed by the Governor General in

Council after consideration of any recommendation made by the Local Government in this behalf.

(4) Assistant Commissioners of Income-tax and Income-tax Officers shall, subject to the control of the Governor General in Council, be appointed by the Commissioner of Income-tax by order in writing. They shall perform their functions in respect of such classes of persons and such classes of income and in respect of such areas as the Commissioner of Income-tax may direct. The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Comissioner and the Commissioner, respectively.

(5) The Board of Inland Revenue may, by notification in the Gazette of India, appoint Commissioners of Income-tax, Assistant Comissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the province in which they perform their functions.

CHAPTER III.

TAXABLE INCOME.

- P. 12.** 6. Save as otherwise provided by this Act, the following heads of income chargeable to income-tax, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing namely :—

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.

- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer :

P. 20,
21, 23.

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

P. 10,
52.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor General in Council. *

P. 1, 14,
24.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

P. 15,
25.

Provided that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free :

P. 10.

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

9. (1) The tax shall be payable by an assessee under the head "Property" in respect of the *bonâ fide annual value* of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely :—

P. 26,
28, 29.

(i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has un-

P. 29.

dertaken to bear the cost of repairs, a sum equal to one-sixth of such value;

P. 29. (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one sixth of such value;

P. 30. (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;

(iv) where the property is subject to a mortgage or charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent;

P. 49. (v) any sums paid on account of land-revenue in respect of the property;

P. 31. (vi) in respect of collection charges, a sum not exceeding the prescribed maximum;

P. 32. (vii) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case :

P. 33. Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

P. 27. (2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year :

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the total income of the owner.

P. 34, 47. 10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

P. 34, 36, 37. (2) Such profits or gains shall be computed after making the following allowances, namely :—

P. 38. (i) any rent paid for the premises in which such business is carried on, provided that, when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;

R. 7.

P. 39.

(ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;

(iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid;

Explanation.—Recurring subscriptions paid periodical-
ly by shareholders or subscribers in such Mutual
Benefit Societies as may be prescribed, shall be
deemed to be capital borrowed within the meaning
of this clause;

P. 40.

(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;—

P. 41.

(v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;

P. 39.

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed :

P. 42.

R. 8—9.

Provided that—

(a) the prescribed particulars have been duly furnished;
 (b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

(c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the

- II of 1886.
- Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be;
- P. 43. (r*ii*) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (v*i*), or any Act repealed hereby, or the Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value;
- P. 44, 49. (v*iii*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;
- P. 36,
45, 47. (v*ix*) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains.
- P. 34. (3) In sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.
- P. 34. 11. (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of Professional earnings. the profits or gains of any profession or vocation followed by him.
- P. 49. (2) Such profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, provided that no allowance shall be made on account of any personal expenses of the assessee.
- P. 14. (3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.
- P. 26. 12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, Other sources. profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).
- P. 48,
49. (2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making

or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

13. Income, profits and gains shall be computed, for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee :

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

(2) The tax shall not be payable by an assessee in respect of—

(a) any sum which he receives by way of dividend as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm.

15. (1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies or to any Provident Fund which complies with the provisions of the Provident Insurance Societies Act, 1912, or has been exempted from the provisions of that Act.

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7, exceed one-sixth of the total income of the assessee.

P. 34,
35, 46.

P. 10,
50.

P. 9, 51.

P. 10,
52.

IX of 1897.
V of 1912.

P. 10.

P. 10. 16. (1) In computing the total income of an assessee sums⁽¹⁾ Exemptions and ex- exempted under the proviso to sub-section (1) clusions in determin- of section 7, the provisos to section 8, sub- ing the total income. section (2) of section 14 and section 15, shall be included.

P. 53, 58. (2) For the purposes of sub-section (1), any sum mentioned in clause (a) of sub-section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

P. 10, 54. 17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely :—

- (a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and
 - (b) the amount by which his total income exceeds that sum.
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CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

P. 55. 18. (1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be leviable in advance by deduction at the time of payment in respect of income chargeable under the following heads :—

- (i) "Salaries"; and
- (ii) "Interest on securities."

P. 23, 52, 56. (2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate.

P. 21,
25, 57.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

P. 53.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

P. 55.

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Board of Inland Revenue directs.

R. 10
—12.

(7) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

P. 55.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

P. 57,
84.

(9) Every person deducting income-tax in accordance with the provisions of sub-section (3) shall, at the time of payment of interest, furnish to the person to whom the interest is paid a certificate to the effect that income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

R. 13.

19. In the case of income chargeable under any other heads Payment in other than those mentioned in sub-section (1) of cases. section 18, and in any case where income-tax has not been deducted in accordance with the provisions of that section, the tax shall be payable by the assessee direct.

P. 55.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will Certificate by company to shareholders receiving dividends.

P. 58,
84.

- R. 14. pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.
- R. 15. 21. The prescribed person in the case of every Government office, and the principal officer or the pre-
- P. 7, 59. Annual return: scribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—
- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;
- R. 16. (b) the amount of the income so received by each such person, and the time or times at which the same was paid;
- (c) the amount deducted in respect of income-tax from the income of each such person.
- P. 10, 60, 62, 63. 22. (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June Return of income. in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year :
- R. 18. Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.
- P. 10. (2) In the case of any person other than a company whose 61, 62. total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.
- P. 62. (3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers

any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer require :

P. 64,
82.

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

23. (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, Assessment he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

P. 10,
71.

(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

P. 65,
66.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

P. 10.

(4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment.

P. 64,
65.

24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set-off against his income, profits or gains under any other head in that year.

P. 33,
67.

Set-off of loss in computing aggregate income.

(2) Where the assessee is a registered firm, and the loss sustained cannot wholly be set-off under sub-section (1), any member of such firm shall be entitled to have set-off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set-off as is proportionate to his share in the firm.

P. 13,
69.

25. (1) Where any business, profession or vocation commenced after the 31st day of March, 1922, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

P. 69.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

P. 13,
69.

(3) Where any business, profession or vocation which was in existence at the commencement of this Act, and on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, no tax shall be payable ^{VII of 1918.} in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the

requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

26. Where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment.

P. 69,
70.

27. Where an assessee or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as cause is shown, hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

P. 62.

28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income, or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income :

P. 62,
63.

Provided that no such order shall be made, unless the assessee has been heard, or has been given a reasonable opportunity of being heard :

Provided, further, that no prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) An Assistant Commissioner or a Commissioner who has made an order under sub-section (1) shall forthwith send a copy of the same to the Income-tax Officer.

- P. 72. 29. When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or
 Notice of demand. when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.
- R. 20. 30. (1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25 or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order :
 A p p e a l against assessment under this Act.
 Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.
- P. 35, 62, 64, 73. (2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, or of the date of the refusal to make a fresh assessment under section 27, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.
- R. 21. (3) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.
- P. 74, 75. 31. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.
 Hearing of appeal.
- (2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.
- (3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—
- (a) confirm, reduce, enhance or annul the assessment, or
 - (b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,

or, in the cases of an order under sub-section (2) of section 25 or section 28,

(c) confirm, cancel or vary such order :

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the making of such order.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of an Assistant Commissioner under sub-section (4) of section 5.

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Appeals against
orders of Assistant
Commissioner.

P. 75.

R. 22.

P. 76.

P. 77.

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

P. 78.

35. (1) The Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the assessment, and shall within the like period rectify any such mistake which has been brought to his notice by such assessee:

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Income-tax Officer has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

P. 79.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna to nearest Anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

P. 65, 82.

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, ^{v of 1908.} 1908, when trying a suit in respect of the following matters, namely :—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses;

P. 65.

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

38. The Income-tax Officer or Assistant Commissioner may, ^{Power to call for information.} for the purposes of this Act,—

- (1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses.

39. The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

P. 65.

^{Power to inspect the register of members of any company.}

CHAPTER V.

LIABILITY IN SPECIAL CASES.

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

P. 80.

41. In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, etc. Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amounts as it would

P. 81.

be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

P. 14, 49, 81, 82. **42.** (1) In the case of any person residing out of British India, all profits or gains accruing or arising to

Non-residents.

such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

P. 83. Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

P. 82. (2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

P. 82. **43.** Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent :

Agent to include persons treated as such.
Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

P. 69.

44. Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

45. Any amount specified as payable in a notice of demand under section 29 or an order under section 31 Tax when payable. or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

P. 83.

46. (1) When an assessee is in default in making a payment Mode and time of recovery. of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

P. 83.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land-revenue.

P. 83.

(3) In any area, with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

P. 83.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a munici-

P. 83.

pal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

P. 83.

(5) If any assessee is in receipt of any income chargeable under the head "Salaries," the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sums so deducted to the credit of the Government of India, or as the Board of Inland Revenue directs.

(6) The Local Government may direct with respect to any specified area, that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

P. 83

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

P. 83.

47. Any sum imposed by way of penalty under the provisions Recovery of penal ties. of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER VII.

REFUNDS.

P. 10, 58,
84.

48. (1) If a shareholder in a company who has received any dividend therefrom satisfies the Income-tax Officer that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates.

P. 9, 10,
51, 67,
84.

(2) If a member of a registered firm satisfies the Income-tax Officer that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax

has been levied on the profits or gains of the firm of that year, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates.

(3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates.

49. (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax and the rate at which he was entitled to, and obtained, relief under that section:

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax.

(2) In sub-section (1)—

- (a) the expression " Indian income-tax " means income-tax and super-tax charged in accordance with the provisions of this Act;
- (b) the expression " Indian rate of tax " means the amount of the Indian income-tax divided by the income on which it was charged;
- (c) the expression " United Kingdom income-tax " means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

50. No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered.

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84.

P. 85.

CHAPTER VIII.

OFFENCES AND PENALTIES.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

- P. 55.** (a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;
- (b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished;
- P. 59, 60,
61, 62.** (c) to furnish in due time any of the returns mentioned in section 21, section 22, or section 38;
- P. 64.** (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice;
- (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

- P. 63,
73.** **52.** If a person makes a statement in a verification mentioned False statement in in section 22, or sub-section (3) of section 30, declaration. or sub-section (2) of section 32 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

XLV of 1860.

- P. 63,
86.** **53.** (1) A person shall not be proceeded against for an offence Prosecution to be at under section 51 or section 52 except at the instance of Assistant instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

- 54.** (1) All particulars contained in any statement made, Disclosure of information by a public servant. return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated

I of 1872.

as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine :

Provided that nothing in this section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under section 193 of the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or
- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or
- (d) of such facts to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act :

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

10 & 11 Geo.
V, Ch. 18.

CHAPTER IX.

SUPER-TAX.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year Charge of super-tax. in respect of the total income of the previous year of any individual, unregistered firm, Hindu undivided family or company, an additional duty of income-tax (in this

P. 2,
9, 10,
11, 88.

Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature :

P. 51,
88.

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

P. 10,
88.

56. Subject to the provisions of this Chapter, the total income for the purposes of super-tax. of any individual, unregistered firm, Hindu undivided family or company shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

P. 89.

57. (1) In the case of any assessee residing out of British India who is a member of a registered firm, partners and shareholders. and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

(2) Where any assessee who is liable to pay super-tax on the amount of the dividends receivable by him from any company is, to the knowledge of the principal officer of the company, residing out of British India, the principal officer shall be liable to pay the super-tax due by such non-resident person in respect of the dividends received by him from the company, and shall have power to deduct the amount of such super-tax from the amount payable by the company to such assessee.

(3) Where any person pays any tax under the provisions of this section on account of an assessee who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident assessee under the provisions of sections 42 and 43.

P. 84,
88.

58. (1) All the provisions of this Act, except section 3, the Application of Act proviso to sub-section (1) of section 7, the proviso to section 8, sub-section (2) of section 14, and sections 15, 17, 18, 19, 20, 21 and 48 shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in section 57, super-tax shall be payable by the assessee direct.

CHAPTER X.

MISCELLANEOUS.

59. (1) The Board of Inland Revenue may, subject to the control of the Governor General in Council, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(i) incomes derived in part from agriculture and in part from business;

(ii) insurance companies;

(iii) persons residing out of British India;

(b) prescribe the procedure to be followed on applications for refunds;

(c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act;

(d) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920; and

(e) provide for any matter which by this Act is to be prescribed.

(3) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(4) Rules made under this section shall be published in the Gazette of India, and shall thereupon have effect as if enacted in this Act.

60. The Governor General in Council may, by notification in the Gazette of India, make an exemption, reduction in rate or other modification, in res-

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R. 23—

24.

P. 96.

R. 25—

32 & 35.

R. 33—

35.

R. 36—

40.

10 & 11 Geo.
V, Ch. 18.

10 & 11 Geo.
V, Ch. 18.

P. 90.

P. 16.

pect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

P. 66.

61. Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceedings, under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

62. A receipt shall be given for any money paid or recovered under this Act.

P. 93.

63. (1) A notice or requisition under this Act may be served on the person therein-named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or on the manager, or any adult male member of the family.

P. 94.

64. (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.

(2) In all other cases an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Board of Inland Revenue :

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

P. 22,
59.

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

66. (1) If, in the course of any assessment under this Act
 Statement of case or any proceeding in connection therewith
 by Commissioner to other than a proceeding under Chapter VIII,
 High Court. a question of law arises, the Commissioner
 may, either on his own motion or on reference from any Income-
 tax authority subordinate to him, draw up a statement of the
 case and refer it with his own opinion thereon to the High Court.

(2) Within one month of the passing of an order under section 31 or section 32, the assessee in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order, and the Commissioner shall, within one month of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

Provided that if in exercise of his power of review under section 33, the Commissioner decides the question, the assessee may withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply to the High Court, and the High Court if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly..

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised hereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

P. 83.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

68. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof :

Provided that such repeal shall not affect the liability of any person to pay any sum due from him or any existing right of refund under any of the said enactments :

P. 13.

Provided, further, that the provisions of section 19 of the Indian Income-tax Act, 1918, shall apply, so far as may be, ~~to all assessments made under that Act in the year ending on the 31st day of March, 1922,~~ ^{to} VII of 1918, and where an adjustment shall be made under the provisions of ~~section 19 of the said Act,~~ the provisions of this Act regarding the procedure for the assessment and recovery of income-tax shall apply as if such adjustment were an assessment made under this Act.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 68.)

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1918	VII	The Indian Income-tax Act, 1918	The whole.
1919	IV	The Indian Income-tax (Amendment) Act, 1919.	The whole.

THE SCHEDULE—*contd.*

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1919	XVIII	The Repealing and Amending Act, 1919.	So much of the First Schedule as relates to the Indian Income-tax Act, 1918.
1920	XVII	The Indian Income-tax (Amendment) Act, 1920.	The whole.
,	XIX	The Super-tax Act, 1920 . . .	The whole.
"	XXXI	The Repealing and Amending Act, 1920..	So much of the First Schedule as relates to the Super-tax Act, 1920.
"	XLIV	The Indian Income-tax (Amendment No. 2) Act, 1920.	The whole.

Extract from the Indian Finance Act, 1922.

* * * * *

1. (1) This Act may be called the Indian Finance Act, 1922.

* * * * *

7. (1) Income-tax for the year beginning on the first day of April 1922, shall be charged at the rates specified in Part I of the third Schedule.

(2) The rates of super-tax for the year beginning on the first day of April 1922, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the third Schedule.

(3) For the purposes of the third Schedule "total income" means total income as defined in clause (15) of section 2 of the Indian Income-tax Act, 1922.

* * * * *

SCHEDULE III.

(See section 7.)

PART I.

Rates of Income-tax.

	Rate.
A. In the case of every individual, every unregistered firm and every undivided Hindu family—	
(1) When the total income is less than Rs.2,000	Nil.
(2) When the total income is Rs.2,000 or upwards, but is less than Rs.5,000.	Five pies in the rupee.
(3) When the total income is Rs.5,000 or upwards, but is less than Rs.10,000.	Six pies in the rupee.
(4) When the total income is Rs.10,000 or upwards, but is less than Rs.20,000.	Nine pies in the rupee.
(5) When the total income is Rs.20,000 or upwards, but is less than Rs.30,000.	One anna in the rupee.
(6) When the total income is Rs.30,000 or upwards, but is less than Rs.40,000.	One anna and three pies in the rupee.
(7) When the total income is Rs.40,000 or upwards.	One anna and six pies in the rupee.
In the case of every company, and every registered firm whatever its total income.	One anna and six pies in the rupee.

PART II.

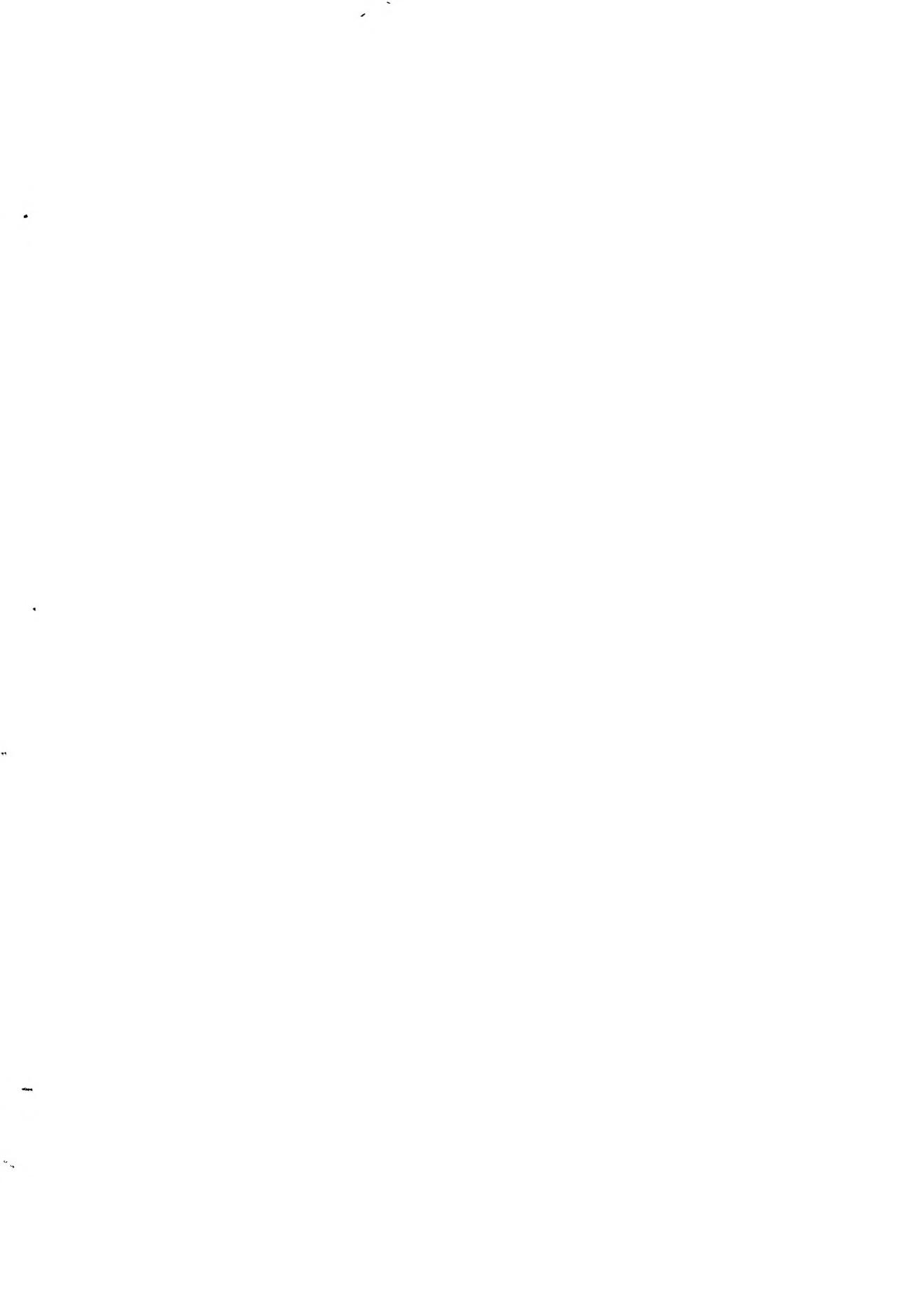
Rates of Super-tax.

In respect of the excess over fifty thousand rupees of total income :—

	Rate.
(1) in the case of every company	One anna in the rupee.
(2) (a) in the case of every Hindu undivided family—	
(i) in respect of the first twenty-five thousand rupees of the excess.	<i>Nil.</i>
(ii) for every rupee of the next twenty-five thousand rupees of such excess.	One anna in the rupee.
(b) in the case of every individual and every unregistered firm, for every rupee of the first fifty thousand rupees of such excess.	One anna in the rupee.
(c) in the case of every individual, every unregistered firm and every Hindu undivided family—	
(i) for every rupee of the second fifty thousand rupees of such excess.	One and a half annas in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess.	Two annas in the rupee.
(iii) for every rupee of the next fifty thousand rupees of such excess.	Two and a half annas in the rupee.
(iv) for every rupee of the next fifty thousand rupees of such excess.	Three annas in the rupee.
(v) for every rupee of the next fifty thousand rupees of such excess.	Three and a half annas in the rupee.
(vi) for every rupee of the next fifty thousand rupees of such excess.	Four annas in the rupee.
(vii) for every rupee of the next fifty thousand rupees of such excess.	Four and a half annas in the rupee.
(viii) for every rupee of the next fifty thousand rupees of such excess.	Five annas in the rupee.
(ix) for every rupee of the next fifty thousand rupees of such excess.	Five and a half annas in the rupee.
(x) for every rupee of the remainder of the excess	Six annas in the rupee.

PART II.

RULES.



No. 3-I.T.

BOARD OF INLAND REVENUE:

NOTIFICATION.

Delhi, the 1st April 1922.

In exercise of the powers conferred by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Board of Inland Revenue has made the following rules, namely :—

1. These rules may be called the Indian Income-tax Rules, 1922.

2. Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them on or before the date on which a return is due under sub-section (2) of section 22 of the Act.

3. The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof : provided that if the Income-tax Officer is satisfied that for some sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by one of the partners to be a correct copy, and in such a case the application shall be accompanied by a duplicate copy.

FORM I.

Form of application for registration of a firm under section 2 (14) of the Indian Income-tax Act, 1922.

To

THE INCOME-TAX OFFICER,

Dated

19

I _____ beg to apply for the registration of my ^{our} firm under section 2 (14) of the Indian Income-tax Act, 1922.

2. The original of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with a copy ^{of the original} is enclosed. The prescribed particulars are given below.

3. I ^{We} do hereby certify that the profits for the year ending, have been or will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature _____

Address _____

Name and address of the firm.	Names of the partners in the firm with the share of each in the business.	Date on which the instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office.	REMARKS.

I ^{We} _____ do hereby certify that the information given above is correct.

Signature(s) _____

4. (1) On the production of the original instrument of partnership or on the acceptance by the Income-tax Officer of a certified copy thereof, the Income-tax Officer shall enter in writing at the foot of the instrument or copy, as the case may be, the following certificate, namely :—

"This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer for _____ in the province of _____ under clause (14) of section 2 of the Indian Income-tax Act, 1922. This certificate of registration has effect from the _____ day of April 19 ____."

(2) The certificate shall be signed and dated by the Income-tax Officer who shall thereupon return to the applicant the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or duplicate copy thereof.

5. The certificate of registration granted under rule 4 shall have effect from the date of registration.

6. A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which it is granted, but shall be renewed by the Income-tax Officer from year to year on application made to him in that behalf on or before the date on which the return under sub-section (2) of section 22 of the Act is due, and accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remains unaltered.

7. Under section 9 (1) (vi) of the Act, the sum to be allowed in respect of collection charges shall not exceed 6 per cent. of the annual value of the property.

8. An allowance under section 10 (2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement:—

Class of buildings, machinery, plant or furniture.	Rate.	REMARKS.
	Percentage on prime cost.	
<i>1. Buildings* :—</i>		
(1) First class substantial buildings of selected materials.	2½	* Double these rates may be allowed for buildings used in industries which cause special deterioration, such as chemical works, soap, and candle works, paper mills, and tanneries.
(2) Buildings of less substantial construction	5	
(3) Purely temporary erections such as wooden structures.	10	
<i>2. Machinery Plant or Furniture† :—</i>		
General rate	5	† The special rates for electrical machinery given below may be adopted, at firm's option, for that portion of their machinery.

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Class of buildings, machinery, plant or furniture.	Rate.	REMARKS
	Percentage on prime cost.	
Rates sanctioned for special industries :—		
Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories.	6½	
Paper Mills, Ship Building and Engineering Works, Iron and Brass Foundries, Electrical Engineering Works, Motor Car repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Dyeing and Bleaching Works, Furniture and Plant in hotels and boarding houses, Cement Works using rotary kilns.	7½	
Plant used in connection with brick manufacture, tile making machinery, optical machinery, glass factories, surgical and dental instruments, Telephone Companies, Collieries.	10	
Sewing machines for canvas or leather	12½	
Motor cars used solely for the purpose of business	15	
Motor taxis, motor lorries and motor buses	20	
3. Electrical Machinery :—		
(a) Batteries	15	
(b) Other electrical machinery, including electrical generators, motors (other than tramway motors), switchgear and instruments, transformers and other stationary plant and wiring and fittings of electric light and fan installations.	7½	
(c) Underground cables and wires	6	
(d) Overhead cables and wires	2½	
4. Hydro-Electric concerns—		
Hydraulic works, pipe lines, sluices, and all other items not otherwise provided for in this statement.	2½	
5. Electric tramways—		

Permanent-way.—The life of the permanent-way is to be taken as 12, 14 or 16 years according to the traffic thereon. The classification is to be based on the average car mileage per

mile of track per annum of the financial year preceding the year of assessment, *viz.*—

- (1) Not exceeding 50,000 car miles per mile of track—16 years.
- (2) Over 50,000 and not exceeding 75,000 car miles per mile of track—14 years.
- (3) Over 75,000 and not exceeding 125,000 car miles per mile of track—12 years.
- (4) Over 125,000 car miles per mile of track—Special consideration.

Where there are special circumstances, such as exceptional gradients and the compulsory use of wood paving, etc., tending to show that the car mileage does not fairly represent the wear and tear of the track, each such case is entitled to special consideration.

Cost of renewals including setts or other paving but excluding concrete foundations should be taken at Rs. 60,000 per mile of single track until the general renewal of the track takes place and the allowance for depreciation should be computed at such a sum per annum as will, in the aggregate over the determined life of the permanent-way, be equal to the cost of renewal as above fixed.

Actual expenditure on repairs and maintenance should be charged as working expenses as and when incurred.

Cars and other Rolling Stock.—All maintenance of car bodies should be charged direct to revenue.

Depreciation on the cost of car tracks and electrical motors should be allowed at 7 per cent. per annum.

General Plant, Machinery and Tools.—All other plant and machinery, machine tools (as distinct from loose tools, etc., which are renewals out of revenue year by year) should be bulked together and depreciation allowed thereon at the rate of 5 per cent. per annum in addition to the cost of repairs.

Class of plant.	Rate.	REMARKS.
	Percentage on prime cost.	
<i>6. Mineral Oil Companies—</i>		
A. Refineries—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	10	

Class of plant.	Rate.	REMARKS.
	Porecentage on prime cost.	
B. Field operations—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	7½	
Except for the following items—		
(1) Below ground—All to be charged to revenue	
(2) Above ground—(a) Portable boilers, drilling tools, well-head tank, rigs, etc.	25	
(b) Storage tanks	10	
(c) Pipe lines—		
(i) Fixed boilers	10	
(ii) Prime movers	7½	
(iii) Pipe line	10	
7. Ships—		
(1) Ocean—		
(a) Steam	5	
(b) Sail or tug	4	
(2) Inland—		
(a) Steamers (over 120 ft. in length)	5	
(b) Steamers inclnding cargo launches (120 ft. in length and under)	6	
(c) Tug boats	7½	
(d) Iron or Steel flats for cargo, etc.	5	
(e) Wooden cargo boats up-to 50 tons capacity	10	
(f) Wooden cargo boats over 50 tons capacity	7½	

42. 9. For the purpose of obtaining an allowance for depreciation under proviso (a) to section 10 (2) (vi) of the Act, the

assessee shall furnish particulars to the Income-tax Officer in the following form—

Description of buildings, machinery, plant, or furniture.	Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which used for the purposes of the business.	Particulars (including original cost, depreciation allowed, and value realised by sale or scrap value) of obsolete machinery, plant or furniture sold or discarded during the year, with dates on which first brought into use and sold or discarded.	REMARKS.
1	2	3	4	5

I _____ declare that to the best of my information and belief the buildings, machinery, plant and furniture described in column 1 of the above statement were the property of _____ during the year ended _____ and that the particulars entered in the statement are correct and complete.

Place _____

Signature _____

Date _____

Designation _____

10. All sums deducted in accordance with the provisions of section 18 of the Act shall be paid by the person making the deduction to the credit of the Government of India on the same day as the deduction is made in the case of deduction by or on behalf of Government, and within one week from the date of such deduction in all other cases :

Provided that the Income-tax Officer may, in special cases, and with the approval of the Assistant Commissioner, permit a local authority, company, public body or association, or a private employer to pay the income-tax deducted from salaries quarterly on June 15th, September 15th, December 15th, and March 15th.

P. 55.

11. In the case of income chargeable under the heading 'Salaries,' where deduction is not made by or on behalf of Government, the person paying the salary shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct and shall send therewith a statement showing the name of the employé from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount of the salary, the deduction for a provident fund or insurance premia, and the amount of tax deducted.

P. 55

11. A. The prescribed rate of exchange for the calculation of the value in rupees of any income chargeable under the head "Salaries" which is payable to the account of a servant by or on behalf of Government shall be the rate noted by the Controller of the Currency in respect of the recovery of contributions to the Indian Civil Service Fund, by the Government in which such service is payable.

- (ii) Numbers of securities.
- (iii) Dates of securities.
- (iv) Amounts of securities.
- (v) Period for which interest is drawn.
- (vi) Amount of interest, and
- (vii) Amount of tax.

P. 57.

13. The certificate to be furnished under section 18 (9) of the Act shall be in the following form :—

Draft No. (1) _____

(1) This number also appears in the interest cages on the back of the Securities.

(2) Name of Security.

Certified that Rs. _____ being income-tax at the rate of ____ pies per rupee has been deducted by draft of this date from Rs. _____ being the amount of interest for Rs. _____ for Rs. _____ for Rs. _____ standing in the name of _____

of _____

To be signed by claimant.

I hereby declare that the securities on which interest as above specified has been received were my own property and were in the possession of _____
at the time when interest was deducted.

Signature _____

Date _____

(N.B.—The securities to be produced when required in support of any claim.)

14. The certificate to be furnished by the principal officer of a company under section 20 shall be in the following form :—

P. 58.

(Name of Company) _____

(Address of Company) _____

Date _____

WARRANT for Rs. , being dividend ⁽¹⁾ of per ⁽¹⁾ Or Di-
cent. for the ⁽²⁾ ending on the day of vidend and
19 ^{, (3)} on ⁽⁴⁾ bonus.
shares in this company, registered in the name of ⁽²⁾ Year or half year, as the case may be.
(5) This dividend was declared at the meeting held on the ⁽⁶⁾ ⁽³⁾ Here enter whether free of income-tax or not.
192 .

⁽¹⁾ Or Di-
vidend and
bonus.

⁽²⁾ Year or half year, as the case may be.

⁽³⁾ Here enter whether free of income-tax or not.

⁽⁴⁾ Here enter number and descrip-
tion of shares.

⁽⁵⁾ Here specify num-
ber and nature of meeting.
⁽⁶⁾ Here enter date.

¹ We hereby certify that income-tax on the profits and gains of the company, of which this dividend forms a part, has been, or will be, duly paid by $\frac{\text{mc}}{\text{ns}}$ to the Government of India.

Signature _____

Office _____

(To be signed by the claimant.)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared and were in the possession of

Signature _____

Date _____

P. 59.

15. The returns for Government officers under section 21 of the Act shall be prepared and submitted to the Income-tax Officer by:—

(a) Civil Audit Officers for all gazetted officers and others who draw their pay from audit offices on separate bills; and also for all pensioners who draw their pensions from audit offices.

(b) Treasury Officers for all gazetted officers and others who draw their pay from treasuries on separate bills, and also for all pensioners who draw their pensions from treasuries.

(c) Heads of Civil or Military offices for all non-gazetted officers whose pay is drawn on establishment bills,

(d) Forest disbursing officers and Public Works Department disbursing officers in cases where direct payment from treasuries is not made, for themselves and their establishments.

(e) Head post masters for themselves and their establishments; Heads of telegraph offices (other than combined post and telegraph offices) for themselves and their establishments; Superintendents of Telegraphs for themselves and their establishments.

(f) Controllers of Military Accounts (including Divisional Military Supply, Marine, Field and War Controllers) for all Gazetted military officers under their audit.

(g) Disbursing officers in the Military Works Department for themselves and their establishments.

(h) Chief Examiners of Accounts or Chief Auditors of Railways concerned for all railway employés under their audit.

P. 59. 16. The minimum income under the head "Salaries" referred to in section 21 (a), shall be Rs. 1,600 per annum.

2,000

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17. The return to be delivered to the Income-tax Officer under section 21 of the Act shall be in the following form :—

P. 59.

Serial number.	Name of person.	Postal address of residence.	Appointment or nature of employment.	Total amount of salary, wages, annuity or pension paid during the year ending on the 31st March 19	Amount of gratuity, fees, commissions, perquisites, (including rent-free quarters) or profits in lieu of or in addition to salary or wages.	Total of columns 5 and 6.	Deductions, sections 7 (1) proviso, section 16.	Net amount chargeable.	Amount of tax payable.	Reduction under section 17.	Amount of tax deducted.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13

I certify that the above statement contains a complete list of the total amounts paid by _____ to all persons who were receiving income on the 31st day of March 19 —at the rate of Rs. 1,600 per annum, or have received during the year ended on that day not less than Rs. 1,600; in respect of salary, wages, annuity, pension, gratuity, fees, commissions, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct.

Signature of person by whom the return is delivered.

Date

18. The return of total income of companies required under section 22 (1) shall be in the following form and shall be accom-

P. 60.

panied by a copy of the profit and loss account referred to therein :—

Income, profits or gains from business, trade, commerce.

R AS. P.

Income, profits or gains as per profit and loss account for the year ended
192

Add any amount debited in the accounts in respect of—

1. Reserve for bad debts
2. Sums carried to reserve for provident or other funds
3. Expenditure of the nature of charity or presents
4. Expenditure of the nature of capital
5. Income-tax or Super-tax
6. Rental value of property owned and occupied
7. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business
8. Interest on reserve or other funds
9. Losses sustained in former years
10. Losses recoverable under an insurance or contract of indemnity
11. Depreciation of any of the assets of the business
12. Expenses not incurred solely for the purpose of earning the profits

TOTAL

Deduct.—Any profits included in the accounts already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free

BALANCE

If the company owns any property not occupied for the purposes of the business a statement in the form prescribed in Schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration.

I, the _____ [Secretary,
etc., (see section 2 (12) of the Act)] of the _____

(name of Company) declare that the information against each head in this return is correctly given as shown in the books of the Company as also in the accounts which have been duly audited by the auditors of the Company and which have been adopted by the shareholders of the Company.

(Signature) _____

(Designation) _____

Dated _____ 19 _____

19. The return of total income for individuals, firms and Hindu-undivided families required under section 22 (2) shall be in the following form:—

P. 61.

Statement of total income during the previous year.

1	2	3
Sources of Income.	Amount of profits or gains or income during the previous year.	Tax already charged on the income.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of, or in addition to, salary or wages . . . [See note (1)]	Rs.	Rs.
2. Interest on Securities (including debentures) already taxed , (2)		
3. Interest on Securities of the Government of India or of local Governments declared to be income-tax free , (3)		
4. Property as shown in detail in Schedule A , (4)		
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) , (5)		
6. Profession , (6)		
7. Dividends from Companies , (7)		

Statement of total income during the previous year—contd.

1	2	3
Sources of Income.	Amount of profits or grains or income during the previous year.	Tax already charged on the income.
8. Interest on mortgages, loans, fixed deposits, current accounts, etc.	Rs.	Rs.
9. Ground Rent		
10. Any source other than those mentioned above, . . [See note (8)] <i>including any income earned in partnership with others.</i>	Total	
Deductions claimed on account of contributions to provident fund, etc., or insurance premia (See note 9).		

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended _____ and that no other income accrued or arose or was received by me ^{the firm} during the said year and that I ^{the firm} have no other sources of income.

Signature _____

Date _____

N.B.—(a) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(b) All income from whatever source derived must be entered in the form, including income received by you as a partner of a firm.

Note 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

Note 2.—“Interest on securities” means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or Company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term “interest on securities” does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or Company paying the interest under section 18 (9) of the Act.

Note 3.—(a) The income-tax payable on the interest receivable on a security of a Local Government issued income-tax free is payable by the Local Government and not by the holder of the security.

(b) Only the interest on securities of the *Government of India* or of a Local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax, but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. *It is chargeable to super-tax.*

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

Note 4.—The tax is payable under this head in respect of the bona fide annual value of any buildings or lands appurtenant thereto of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

SCHEDULE A.

Deductions.														
Serial number :	Name of village or town where the property is situated.	Name of mohalla or street and number of property, if any.	In the case of municipalities the name of the person in whose name the property stands in the municipal register.	Whether the property is occupied by owner or is let.	Annual letting value of the property.	Amount of rent actually received for the property if let.	Of one-sixth of the annual letting value shown in column 6.	Premium paid to insure the property against damage or destruction.	Interest paid on a mortgage or charge on the property.	Ground rent paid for the property.	Land revenue paid for the property.	Collection charges paid.	Total of columns 8 to 13. $\beta \gamma \beta$	Net amount to be carried over to the front of the form.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

Note 5.—(a) Where you keep your accounts on the mercantile accountancy or book profits system, you must file return in the following form :—

Income, profits or gains from business, trade, commerce.

	R
Income, profits or gains as per Profit and Loss Account for the year ended 192	...
<i>Add any amount debited in the accounts in respect of—</i>	
1. Reserve for bad debts
2. Sums carried to reserve for provident or other funds
3. Expenditure of the nature of charity or presents
4. Expenditure of the nature of capital
5. Income-tax or Super-tax
6. Drawings or salary of proprietor or partners
7. Rental value of property owned and occupied
8. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business.	...
9. Interest on the proprietor's or partner's capital including interest on reserve or other funds.	...
10. Losses sustained in former years
11. Losses recoverable under an insurance or contract of indemnity
12. Depreciation of any of the assets of the business
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits.	...
TOTAL
<i>Deduct.—Any profits included in the account, already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free.</i>	...
Balance

(Signature of the person making the return).

(Date) _____ 192 .

(b) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, i.e., showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business;
- (ii) Additions to or alterations, extensions, or improvements of any of the assets of the business;
- (iii) Interest on the capital of the proprietors or partners of the business;

- (iv) Bad debts not actually written off in the accounts;
- (v) Losses sustained in previous years;
- (vi) Reserves of any kind;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business;
- (viii) Any expenditure of the nature of charity or a present;
- (ix) Any expenditure of the nature of capital;
- (x) Any loss recoverable under an insurance or a contract of indemnity;
- (xi) Depreciation of any kind other than that specified in the Act;
- (xii) Drawings or salaries of the proprietors or the partners;
- (xiii) Private or personal expenses of the assessee;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

Note 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred *solely* for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

Note 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends which shareholders receive represent the net amount remaining after income-tax has been paid. The amount of income-tax paid upon these dividends, even if the dividends are stated to be income-tax free, should be added to the amount of the dividends actually received, and the gross amount arrived at should be entered in column 2 of the statement.

If the rate of tax applicable to your total income is less than the rate at which tax has been paid upon your dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

Note 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head.

Note 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

20. The Notice of Demand under section 29 shall be in the following form :—

P. 72.

NOTICE OF DEMAND UNDER SECTION 29 OF THE INCOME-TAX ACT, 1922.

To _____

1. You have been assessed for the current year to income-tax amounting to Rs. [in addition to which a penalty of

Rs. has been imposed], as shown in the copy of the assessment form sent herewith.

2. You have also been assessed to super-tax amounting to Rs.

3. You are required to pay the amount of Rs. on or before the _____ to at when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at (or the Collector of the district) within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form.

Or

The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you failed to make a return of your income under section 22 to comply with a notice under sub-section (4) of section 22, and no appeal to comply with a notice under sub-section (2) of section 23 lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying, with the terms of the notice(s), you may apply to me, under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

Dated _____ 19 .

Income-tax Officer.

(Place) _____

Note.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM.

ASSESSMENT FOR 192 -2 .

District.

Name of assessee

Address

Serial number.	Detailed sources of income.	Amount of income.	Tax deducted at source.	REMARKS.
1	Salaries	R	R	A
2	Interest on securities			
3	Property			
4	Business			
5	Profession			
6	Other sources			
(i) Total income				R A.
(ii) Deduction on account of provident fund, insurance premia, etc.				R A.
(iii) Deduct sums received as dividends or from a registered firm.				
(iv) Deduct amount of interest from tax-free securities of the Government of India.				
(v) Income now to be taxed				
(vi) Rate applicable—pies per rupee				
(vii) Amount of tax				
(viii) Reduction under section 17				R A.
(ix) Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (5)				
(x) Abatement on account of dividends (at pies per rupee).				
(xi) Abatement on account of income from a registered firm (at pies per rupee).				
(xii) Net amount of tax				
(xiii) Penalty under section 28 [or section 25 (2)]				
(xiv) Total sum payable (in figures as well as in words)				
Rupees				
Annas				

FOR USE IN 1922-23 ONLY.

Adjustment for year 1921-22 and net demand.

	R.	A.	P.		R.	A.	P.
1. Actual total income of year adjusted.				6. Tax already paid in respect of the year adjusted—			
2. Deduct items exempted or excluded under section 12 of the Indian Income-tax Act, 1918.				(i) at source . . . (ii) to Income-Tax Officer (preliminary assessment under section 18).			
3. Actual taxable income of year adjusted.				Total . . .			
4. Rate applicable— Pies ordinary on R . . .				7. Balance for the year adjusted—			
5. Tax due— Ordinary—section 18 . . .				Recoverable To be refunded . . .			
Total . . .				8. Account for 1922-23 as above.			
				9. Net amount to be recovered refunded . . .			
				In words . . .			

P. 73. 21. An appeal under section 30 (2) shall be in the following form:—*in the case of an adjustment against a refusal of an Income-tax officer to make a particular order.*

5. Your petitioner has made a return of his income to the Income-tax Officer——under section 22, sub-section (2) of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer under section 23 (2) and [or section 22 (4)].

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act).

(Signed)

Grounds of appeal.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)

22. An appeal under section 32 (2) shall be in the following form :—

To

The Commissioner of Income-tax,

The _____ day of _____ 19_____

The petition of _____ sheweth as follows :

1. Under section 31 (3) of the Indian Income-tax Act, 1922, the Assistant Commissioner of _____ has increased the tax payable by your petitioner from Rs. _____ to Rs. _____.

2. Your petitioner prays that the enhancement may be set aside or reduced to Rs. _____ for the reasons stated below :

Signed _____

Grounds of appeal.

I, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed _____

Subject to the provisions of Rule 24

P. 2. 23(1) In the case of income derived in part from agriculture and in part from business an assessee shall be entitled to deduct from such income the market value of any agricultural produce raised by him or received by him as rent in kind which he has utilized as raw material for the purposes of his business or the sale receipts of which are included in the accounts of his business. The balance of such income shall be deemed to be income derived from the business and no further deduction shall be made therefrom in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

P. 2. 23(2) 24. For the purposes of rule 23 "market value" shall be deemed to be :—

(a) where agricultural produce is ordinarily sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

(b) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

- (1) the expenses of cultivation;
- (2) the land revenue or rent paid for the area in which it was grown; and
- (3) such percentage of the aggregate of (1) and (2) as the Board of Inland Revenue may from time to time fix for the class of produce concerned.

25. In the case of Life Assurance Companies incorporated in British India whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits disclosed by the last preceding valuation, provided that any deductions made from the gross income in arriving at the actuarial valuation which are not admissible for the purpose of income-tax assessment, and any Indian income-tax deducted from or paid on income derived from investments before such income is received, shall be added to the net profits disclosed by the valuation.

P. 96.

26. Rule 25 shall apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

P. 96.

27. If the Indian income-tax deducted from interest on the investments of a company exceeds the tax on the income, profits and gains thus calculated, a refund may, be permitted of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits, and gains.

P. 96.

28. In the case of other classes of insurance business (fire, marine, motor car, burglary, etc.) of a company incorporated in British India, the income, profits or gains shall be determined in accordance with the provisions of the Act, subject to the allowance specified in the rule next following.

P. 96.

29. If in the ordinary accounts of any insurance business other than Life Assurance, Annuity, or Capital Redemption Business carried on by an Insurance Company any amount is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risk of exceptional losses) and is not used for any other purpose such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business.

P. 96.

30. Any amount either written-off in the accounts or through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on, securities or other assets, or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business. Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be

income chargeable to tax, subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains.

- P. 96. 31. The income, profits and gains of companies carrying on Dividing Society or Assessment business shall be taken at 15 per cent. of the premium income in the previous year and, in the case of non-resident companies, at 15 per cent. of the Indian premium income in the previous year.
- P. 96. 32. Notwithstanding anything contained in rules 25 to 31, the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of businesses.
- P. 82. 33. In any case in which the Income-tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income-tax may be calculated on such percentage of the turnover so accruing or arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable.
- P. 82. 34. The profits derived from any business carried on in the manner referred to in section 42 (2) of the Act may be determined for the purposes of assessment to income-tax according to the preceding rule.
- P. 82, 96. 35. The total income of the Indian branches of non-resident insurance companies (Life, Marine, Fire, Accident, Burglary, Fidelity Guarantee, etc.), in the absence of more reliable data, may be deemed to be the proportion of the total income, profits or gains, of the companies, corresponding to the proportion which their Indian premium income bears to their total premium income.
- P. 84. 36. An application for a refund of income-tax under section 48 of the Act shall be made in the following form :—

Application for refund of Income-tax.

I _____ of _____

do hereby state that my income from all sources to which the

Act applies during the year ending on the 31st
March 19 , amounted to Rs.———only.

I therefore pray for a refund of

Rs——— under " Salaries "

Rs.——— under " Securities "

Rs.——— under " Dividends from
companies "

Rs.——— under " Share of profits
of the registered firm "

known as——— of which I am a partner. (The portions
not required
should be
scored out.)

Signature————

I hereby declare that what is stated herein is correct.

Dated——— 19 .

Signature————

37. The application under rule 36 shall be accompanied by a return of total income in the form prescribed under section 22 unless the applicant has already made such a return to the Income-tax Officer.

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38. Where the application under rule 36 is made in respect of interest on securities or dividends from companies, the application shall be accompanied by the certificate prescribed under section 18 (9) or section 20, as the case may be.

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39. The application under rule 36 shall be made to the Income-tax Officer for the district in which the applicant is chargeable directly to income-tax or, if he is not chargeable directly to income-tax, to the Income-tax Officer for the district in which the applicant ordinarily resides,^{or if he is not resident in British}

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41. The application under rule 36 may be presented by the applicant in person or through a duly authorized agent or may

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PART III

NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX LAW AND RULES



NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX
LAW AND RULES.

1. *Extent of the Act.* [Section 1 (2).]—This sub-section governs the whole of the Act and defines the areas to which the Act applies. Section 7 (2) on the other hand governs merely the taxation of particular classes of income.

The words “and to all other servants of His Majesty in those dominions” were added in the Act of 1918 as it was considered advisable to abandon the previous limitation, in the case of persons serving outside British India, of liability to British subjects, since it not infrequently happens that subjects of Indian States are taken into Government employment and sent to serve in places outside British India.

The words “including British Baluchistan” were inserted in the Act of 1922. Prior to the passing of that Act, the Income-tax Act was applied to British Baluchistan by notification in a restricted form, income-tax being, under the notification, leviable only upon salaries received by persons in the service of, and paid by or on behalf of, Government or of a local authority established in the exercise of the powers of the Governor General in Council. The Act now applies in full force to the whole of British Baluchistan.

Under this sub-section—

(a) the Act applies in Indian States to all persons in the service of Government, whatever their nationality. It applies in Indian States to persons in the service of a local authority established in the exercise of the powers of the Governor General in Council, only if they are British subjects or servants of Government lent to the local authority;

(b) the salaries of Government officers serving outside British India are not liable to income-tax unless they are drawn or otherwise received in British India;

(c) Frontier Agency tracts and ceded areas are included in the term “dominions of Princes and Chiefs in India in alliance with His Majesty” (G. I. No. 791-F., dated the 26th March 1918).

2. *Definition of “agricultural income.”* [Section 2 (1).]—Agricultural income is exempted from tax under the provisions of section 4 (3) (viii) of the Act and any income to be exempted must fall within the words of this definition. The definition was amended in the Act of 1922 in order to make it clear that rent or revenue derived from land used for agricultural purposes [clause (a)] is exempt from tax only in cases where the land is assessed to land revenue by an authority in British India or is subject to a local rate assessed and collected by an authority in British India, and that the exemption does not apply to cases where the land pays revenue or local rate to authorities outside British India. Clauses (b) and (c) were also amended at the same time in order to make it clear that the limitations in clause (a) apply also to the incomes specified in clauses (b) and (c), so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India.

A further amendment was also made by the Act of 1922 in clause (b) (iii). Under the previous Acts profits from the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him were included under "agricultural income" only in cases where the cultivator or receiver of rent-in-kind did not keep a shop or stall for the sale of such produce. Under the present Act profits derived by a cultivator from the sale of the produce raised by him are included in the term "agricultural income" where the produce is sold in its raw state, that is, if no process has been performed in respect of the produce other than a process of the nature described in sub-clause (ii). The tax therefore is now not leviable on the profits derived by a cultivator or receiver of rent-in-kind from the sale of the *raw* produce raised or received by him even if he keeps a shop for the retail vend of such raw produce.

The income derived from the manufacture of indigo is, under the orders contained in paragraph 16 (20), exempt from tax up to the 31st March 1923.

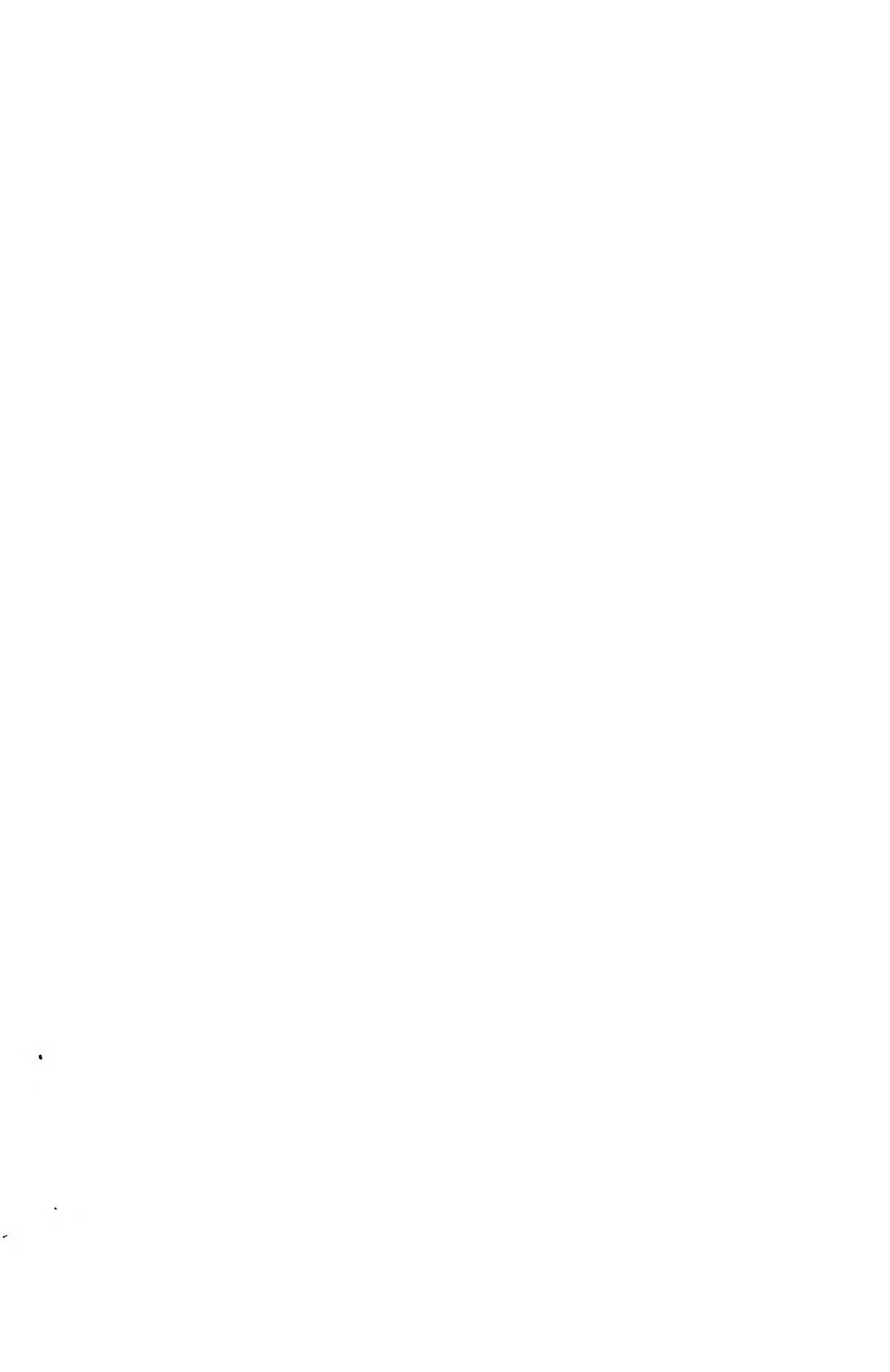
Rules 23 and 24 prescribe the manner in which, and the procedure by which, profits and gains shall be arrived at in the case of incomes derived in part from agriculture and in part from business, and provide for the separation of industrial from agricultural profits in cases where the agricultural *raw* produce is worked up for the market.

Attention is invited to the ruling of the High Court of Bengal (Case No. 1) in which it has been held that the premium paid for the settlement of waste lands or abandoned holdings may reasonably be regarded as "rent or revenue" derived from land, as used in this definition, but that the same considerations do not apply to the *salami* or premium paid to a land-holder for recognition of a transfer of a holding from one tenant to another. This latter sum is taxable. Illegal *abwabs* are also taxable since they do not come within the definition of "agricultural income".

Attention is invited also to the rulings of the Patna High Court and of the Bengal High Court (Cases Nos. 2 and 3) in which it has been held that the profits of sugar factories and profits derived from the manufacture of tea as a marketable commodity from the green leaves are liable to assessment.

3. *Definition of "assessee."* [Section 2 (2).]—"Assessee" is defined to mean a person by whom income-tax is payable. Income-tax includes super-tax which is defined in section 55 to be "an additional duty of income-tax." Under section 3 (39) of the General Clauses Act, the word "person" includes any company or association or body of individuals whether incorporated or not.

The charging sections (sections 3 and 55) lay down who the persons and associations are who are liable to income-tax and super-tax. Income-tax is payable under section 3 by every individual, company, firm and Hindu undivided family, and super-tax under section 55 is payable by every individual, company, *unregistered* firm and Hindu undivided family. While both income-tax and super-tax, therefore, are payable by every individual, company and Hindu undivided family, there is a distinction in the case of firms. All firms whether registered or unregistered (see paragraph 9) are liable to pay income-tax, but while unregistered firms are liable to pay super-tax, registered firms are not. The



income of registered firms is liable to super-tax in the hands of the individual partners of the registered firm.

4. *Definition of "company."* [Section 2 (6).]—This definition includes all companies constituted in the Dominions of the Crown, while the latter part of the definition is confined to such foreign associations as the Board of Inland Revenue may desire to treat as companies for the purposes of the Act. The object of this latter part is to include associations such as the *French Societies Anonymes* which, though incorporate bodies, have many characteristics in common with the companies recognised by our law, if the Board of Inland Revenue thinks that they should be treated as companies for the purposes of the Act.

5. *Definition of "previous year."* [Section 2 (11).]—Under section 3 of the Act, assessable income is to be computed with reference to a fixed period which is known as the "previous year." This fixed accounting period, the income, profits and gains of which alone are taken into consideration in making an assessment, is treated as isolated, without any consideration of what went before or what came after. The definition of the phrase "previous year" in the Act of 1918 restricted the accounting period to a period of 12 calendar months. The period of 12 calendar months was the period ending on the 31st day of March next preceding the year for which the assessment was to be made, but the assessee was given an option of adopting a year of 12 calendar months ending on a date other than the 31st of March if that was the date up to which his accounts were made up. This gave rise to difficulties in the case of certain communities, whose commercial year is not necessarily a calendar year, but is a period which, expressed in calendar months, varies from year to year, and in one year may be slightly over and in another slightly under 12 months. Again, under the definition in the Act of 1918, any year which was adopted in place of the financial year had to terminate at some period within the previous financial year, and as there are numerous cases where the commercial year terminates in the month of April, the returns and accounts on which the assessment was based in such cases related to a period more than 12 months prior to the date of assessment. While the definition of the phrase in the Act of 1918 has been repeated practically without alteration in clause (a) of this sub-section, clause (b) is a new provision providing for the difficulties referred to above. Under this clause the Board of Inland Revenue or the Commissioner of Income-tax in a province, if authorised by the Board of Inland Revenue, may determine as the "previous year" a commercial year which may be slightly over or slightly under 12 months, and which may terminate on a date subsequent to the end of the previous financial year. The Board of Inland Revenue has authorised the Commissioner of Income-tax in each province to determine as the "previous year" in the case of any person, business or company, or class of person, business or company,

- (a) a commercial year which may consist of more or less than 12 months, provided that no commercial year which may extend to less than 11 or more than 13 calendar months in any one year shall be so determined; and
- (b) a commercial year terminating after the end of the previous financial year, provided that no commercial year terminat-

ing later than one month after the end of the previous financial year shall be so determined.

Where the Commissioner desires that a "previous year" should be recognised which does not come within his powers of sanction as stated above, he must obtain the orders of the Board of Inland Revenue.

Income-tax Officers are, therefore, debarred from treating as a "previous year" any period which does not come within the definition in clause (a) unless such "previous year" has been sanctioned either by the Income-tax Commissioner or the Board of Inland Revenue.

Under the proviso to clause (a) an assessee who has exercised the option of selecting as his "previous year" a year terminating on a date other than the 31st day of March within the previous financial year, may not again exercise that option except with the consent of the Income-tax Officer, and upon such conditions as he may think fit. Income-tax Officers in dealing with such cases, and Commissioners in dealing with cases under sub-clause (b), should take steps to secure that the changing over from one previous year to another shall not result in any loss of revenue. The convenience of an assessee in this matter must be studied so far as possible, as it is desirable that the accounting period for income-tax purposes should be the same as the accounting period according to which an assessee makes up his accounts for the purposes of his business, but in the actual year of change conditions should be laid down sufficient to secure that the substitution of one year for another shall not result in any profits of an assessee escaping assessment.

6. Definition of "Principal Officer." [Section 2 (12).]—Income-tax Officers should treat as the "Principal Officer" of a local authority or company or other public body or association in the first instance the officials specified in clause (a); it is only in cases where the Income-tax Officer has no information regarding the persons who discharge the functions of the officers mentioned in clause (a) or where such persons cannot be found, that he should use the powers conferred by clause (b) of treating as the principal officer any other person connected with the company, public body or association.

7. Meaning of the term "local authority."—"Local authority," a phrase used in sections 2 ((12), 4 (3) (iii), 7 and 21, is defined in section 3 (28) of the General Clauses Act as

"a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of, a municipal or local fund."

8. Definition of "public servant." [Section 2 (13).]—This definition is of importance for the purposes of section 54 of the Act. The definition of the phrase in the Indian Penal Code contains the following:—

"The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely:—

Ninth:—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

9. *Registered and Unregistered Firms.* [Section 2 (14) and (16).]—Rules 2 to 6 prescribe the method of registering a firm. A firm to be registered must be constituted under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm. The distinction between a registered and unregistered firm for the purposes of this Act is:—

(1) *Income-tax* is assessed upon the profits of a *registered* firm at the maximum rate whatever the amount of the profits of the registered firm may be (see Finance Act); and a member of such a registered firm, on satisfying the Income-tax Officer that such maximum rate is higher than the rate applicable to his "total income," may get a refund on his share of those profits calculated at the difference between the two rates (see section 48 (2)), such share of the profits being included in the "total income" of such member for the purpose of determining the rate applicable [see section 16 (1)]. In the case of an *unregistered* firm *income-tax* is levied on the income of the firm at a rate graded according to the profits of the firm as if it were an individual (see Finance Act); a member of such a firm is not entitled to any refund, but his share of the profits of the firm is included in his "total income" for the purpose of determining the rate at which he shall pay income-tax on any other income [see section 16 (1)].

The profits of a *registered* firm are liable to tax at the maximum rate even if they are less than Rs. 2,000, while an *unregistered* firm is not liable to income-tax if its profits in any one year are less than Rs. 2,000. But where the profits of an unregistered firm are not assessed to income-tax, they are liable to tax in the hands of the individual members of the firm, that is, they are included in the assessable income of the individual member [see Finance Act and section 14 (2) (b)];

(2) A *registered* firm is not liable to *super-tax*, the share of individual members in the profits of such a firm being included in the income of each individual member for the purposes of super-tax. An *unregistered* firm is, however, liable to super-tax (like an individual) on that amount of the profits of the firm which is in excess of Rs. 50,000 (see Finance Act and section 55 of the Income-tax Act.) Super-tax is not payable by an individual having a share in an unregistered firm in respect of the profits of the unregistered firm, except in cases where the profits of the unregistered firm have not been assessed to super-tax (see section 55 proviso).

10. *Definition of "total income".* [Section 2 (15).]—The phrase "total income" is used in sections 3, 15 (3), 16 (1), 17, 22 (1) and (2), 23 (1) and (3), 48, 55 and 56. The necessity for the definition and for the use of the phrase is due to the fact that, as stated in paragraph 3, tax is payable not only by individuals but also by firms, companies and Hindu undivided families; that is, the Act provides for taxation at the source in certain cases and

for taxation in the hands of the individual recipient in others. Whether, however, tax is deducted at the source or in the hands of the individual recipient, it is the total income of the individual recipient from all sources to which the Act applies that determines his liability to income-tax (that is, whether his total income amounts to Rs. 2,000), and the rate at which he has to pay income-tax on the whole of his income. The solitary exception is in the case of Hindu undivided families, income from which [under section 14 (1) read with section 16 (1) of the Act] is not included in the total income of the individual recipient. Again, there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7 (1), the sums paid on account of insurance premia under section 15, securities issued income-tax free by the Government of India or by local Governments under the provisos to section 8, on which income-tax is not payable, but all such sums are included in the total income of the assessee for the purpose of determining his liability to income-tax and the appropriate rate at which the tax shall be levied. There is, however, no taxation at the source in the case of super-tax, nor are there any portions of income (other than income derived from a Hindu undivided family by a member or from an unregistered firm in the special case mentioned in the proviso to section 55) which are exempted from payment of super-tax and it is upon the total income that super-tax is chargeable in the hands of the individual.

11. *Graduation of income-tax.* (Section 3.)—The Income-tax Act deals merely with the basis, the methods and the machinery of assessment, and does not contain, as the previous Acts did, schedules specifying the rates at which income-tax shall be charged. These rates are determined by the Finance Act which is passed annually by the Central Legislature. The rates prescribed by the current Finance Act will be found on the last page of Part I of this Manual. The same remarks apply to super-tax (see section 55 of the Act).

12. *Definition of "Income"* (Section 3.)—Section 3 of the Act of 1918 provided that the Act should apply to "income." Difficulties were experienced in regard to the assessment of business profits owing to a High Court ruling that the word "income" in that section meant income actually or constructively received and that the use of the word in that sense in the said section restricted and limited any interpretation to be placed upon the following sections of the Act which specified the different classes of income liable to the tax. This interpretation would, if strictly followed, have caused considerable inconvenience in assessing business profits to those assessee who keep their accounts not on the basis of sums actually received and sums actually paid out but on the principles of mercantile accountancy, by the preparation of a profit and loss account and the comparison of the value of the stock in hand at the beginning and at the end of each year, since such assessee would have been required to recast the whole of their accounts on a cash basis for income-tax returns. There were other directions also in which so strict an adherence to the interpretation placed on the word "income" would have caused difficulties. For this reason the phraseology in section 3 and in other sections of the present Act has been re-worded. The plan adopted has been not to attempt a general covering definition of "income," but to prescribe that the tax shall be chargeable not upon "income" (whether "income" be deemed to mean actual receipts and expenditure or any other general definition)

but in respect of "all income, profits or gains" as set out and defined in section 4 and sections 6 to 12 of the Act. If there is any class of income that does not fall within the words that impose the charge in those sections, that class of income is not within the scope of the tax.

For the method of accounting to be adopted in computing "income, profits or gains," see paragraph 34.

13. Accounting period to be adopted for determining assessable income. (Section 3.)—Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made was ascertained. This system has now been abolished in the present Act which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the "previous year" (see paragraph 5) and for the abolition of the adjustment system except in the cases specially provided for in section 25 and in the provisos to section 68 of the Act. The provisos to section 68 of the Act are merely temporary provisions providing for the transitional period in the year 1922-23 and the only exceptions to the general rule that assessments are made finally on the profits of the previous year are contained in section 25 of the Act. Under the first two sub-sections of section 25, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses that close down during the course of a financial or commercial year, it is provided that in such cases, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in which a business, profession or vocation is closed down on the income of that year. This is merely a discretionary and not an obligatory method of assessment to be adopted in exceptional cases where delay in making the assessment might lead to a loss of revenue.

The other class of cases provided for in sub-section (3) of section 26 is confined to those particular businesses, professions or vocations which were in existence when the present Act came into force and on which tax had been charged under the provisions of the Act of 1918. Since the abolition of the adjustment system meant that in the case of those particular businesses the tax would, had no special provision been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses, professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made.

14. When income earned outside British India is taxable. [Section 4 (1).]—The Act applies to all income from whatever source it is derived if it accrues or arises or is received in British India, or is, under the provisions of the Act, deemed to accrue or arise or to be received in British India. The tax is, therefore, payable on all income arising or accruing in British India whether the recipient resides in British India or not (see case No. 5). The tax is also payable in respect of income received by a resident in British India irrespective of whether it accrued or arose within or without British India. Tax is also payable in respect of income which is "deemed under the provisions of this Act to accrue or arise or to be received in British India." The particular cases where income is "deemed

"under the Act to accrue or arise or to be received in British India" are specified in section 4 (2), section 7 (2), section 11 (3), and section 42.

Section 4 (2) was inserted in the present Act owing to the tax having previously been evaded in the case of income accruing or arising out of British India and received in British India by bringing in the said income at intervals and claiming that as such income was not received in British India in the year in which it arose or accrued out of British India, it was, when brought into British India, not income but accumulated profits or savings or capital. This sub-section is restricted in its application to the case of *business profits or gains* and provides with respect to such profits or gains that they shall be deemed to be profits and gains of the year in which they are received or brought into British India notwithstanding that they did not accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose. The provision relates, of course, merely to income, profits or gains, and not to the importation of capital; it provides for the inclusion in the assessable income, profits or gains of the year in which it was received or brought into British India, of business profits or gains accruing or arising within the previous three years which would, apart from the provisions of this sub-section, have been taxable had they been brought into British India in the year in which they arose or accrued.

A person resident in British India carrying on and controlling a business abroad is not, therefore, liable to tax on the profits of the business abroad unless and until such profits are received or brought by him into British India, and when so brought or received he is only liable to tax on the profits of the last three years, but the profits of those three years are included in his taxable income of the year of receipt.

Reference is invited to case No. 4 in which the High Court of Madras held that profits derived from business carried on outside British India by persons resident in British India are not liable to assessment under the Act if the profits are not remitted to British India. The assessee in this case who resided in British India was a proprietor of a money lending business carried on by his agents in various places outside British India. The only part taken by the proprietor in the business was to acquaint himself with the state of business abroad and occasionally to issue general instructions, and it was not disputed that none of the income accruing abroad had ever been transmitted to him in India.

For the special case of tax on interest on sterling securities see paragraph 15.

15. *Is interest on the sterling securities of the Government of India or on the sterling securities issued by English companies carrying on business in British India liable to Indian income-tax?*—Where such interest is received by the debenture or security holder in British India, it is clearly liable to Indian income-tax under section 4 (1); where, however, it is not received in British India, the tax will only be payable under the terms of the same section if the interest can be held to accrue or arise there. "Accrue or arise" as used in this connection are general words descriptive of a right to receive, and in this view the relevant portion of section 4 (1) of the Act may be paraphrased by stating that the income to which the Act applies is income received in British India or income which there is a right to receive in British India. If this

test is applied, interest on the sterling securities of the Government of India, if not received in British India, will not be chargeable with Indian income-tax; and similarly the interest on sterling debentures issued by companies will not be chargeable if, as is usually the case, there is a right to receive it in England. For the purpose of the test it is immaterial in what currency the security or loan and its interest is expressed, and consequently the same principle is also applicable in determining the liability to Indian income-tax of the interest on foreign (other than sterling) debentures. On the other hand, interest on promissory notes of the Government of India enfraced for payment in England is liable to Indian income-tax, since here the right to receive payment of interest is a right to receive it in India, and the concession by which Government paper can be enfraced for payment of interest in London does not constitute any part of the actual contract entered into by Government.

16. *Exemptions.*—In addition to the exemptions mentioned in section 4 (3), the following further exemptions have been made by the Governor General in Council in exercise of the powers conferred by section 60 of the Act.

“ The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income of an assessee for the purposes of the said Act :—

- (1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State; and the official salaries and fees received in India by Foreign Consuls, Representatives and Consular employés from their Governments.

(The latter portion of this exemption applies only to *foreign* consuls, representatives and their foreign employés : and as regards them it applies only to salaries and fees received from their Governments and not to any other income profits or gains, accruing or arising to them or received by them in British India. The exemption does not apply to residents in India who are employed as consuls or representatives of foreign powers or as employés of foreign consuls.)

- (2) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.
- (3) Scholarships granted to meet the cost of education.
- (4) Such portion of the income of a member of His Majesty's Forces or of His Majesty's Indian Forces as is compulsorily deducted from his salary by the orders, or with the approval, of Government for payment to a regimental mess or band fund.
- (5) The allowances attached to—
The Victoria Cross.
The Military Cross.
The Order of British India.
The Indian Order of Merit.

- (6) The interest on Government securities held by Ruling Chiefs and Princes of India, as the property of their States, in the special non-transferable form of Government promissory notes.
- (7) The yield of Post Office cash certificates.
- (8) The interest on deposits in the Post Office Savings Bank.
- (9) The income derived by a University or other educational institution existing solely for educational purposes and not for purposes of profit, from fees and other receipts of a similar character.
- (10) The salary of His Majesty's Trade Commissioners in India.
- (11) The gratuities which are granted to officers and others in respect of wounds or injuries received either in action or in the performance of military duty otherwise than in action.
- (12) The gratuities which are granted to the widows, children or other relatives of officers and others who are killed in action or suffer violent death due directly or wholly to war service, or are killed or die of injuries sustained on flying duty or while being carried on duty in air craft under proper authority, or die within seven years from wounds or injuries so received.
- (13) The gratuities granted to non-pensionable subscribers to a Railway Provident Fund on their retirement or in the event of their death while in service to their widows or children dependent on them.
- (14) The allowance or salary paid in the United Kingdom to officers on leave or duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.
- (15) The leave allowance or salary drawn from any Colonial Treasury by an officer on leave or duty in the Colony.
- (16) The pensions of officers drawn from any Colonial Treasury or paid in the United Kingdom, whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.
- (17) The interest on the Mysore Durbar twenty-year $6\frac{1}{4}$ per cent. Bonds of 1920, ten-year 7 per cent. Bonds of 1921, 20 to 30-year $6\frac{1}{2}$ per cent. Bonds of 1921.
- (18) Pensions granted to members of His Majesty's naval, military or air forces in respect of wounds or injuries received in action or in the performance of naval, military or air force duty otherwise than in action.
- (19) Pensions granted to members of His Majesty's naval, military or air forces who have been invalidated for naval, military or air force service on account of bodily disability attributable to or aggravated by such service; and

(20) The income derived from the manufacture of indigo for a period of two years commencing with the 1st of April 1921; and

The following class of income shall be exempt from the tax payable under the said Act, but it shall be taken into account in determining the total income of an assessee for the purposes of the said Act:—

The interest on Government securities purchased through the Post Office and held in the custody of the Accountant-General, Posts and Telegraphs.”

In addition to the above the following remission has also been made under section 28 of the Co-operative Societies Act, 1912, *viz.*, “The Governor General in Council is pleased to remit the income-tax payable in respect of the profits of any co-operative society for the time being registered under that Act, or of the dividends or other payments received by the members of any such society on account of profits.” It is to be particularly noted that under this latter notification Co-operative Societies are liable to pay income-tax on the income derived by them from interest on securities and that Co-operative Societies are not exempt from super-tax but are liable to pay super-tax on the whole of their profits.

Apart from the particular cases of Co-operative Societies and of Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, the incomes or portions of incomes exempted under section 4 of the Act and under the orders of the Governor General in Council under section 60 of the Act referred to above, are not only not subject to income-tax or super-tax, but they are also not to be taken into account in determining the rate of tax on other income; they are excluded from consideration altogether. *

17. *Exemption of income derived from property held under a religious or charitable trust.*—Under section 4 (3) (i) income derived from property which is held under a purely religious or charitable *trust or under any other legal obligation* that it should be utilised for religious or charitable purposes is exempt.

Section 4 (3) (ii) similarly exempts the income of religious or charitable institutions which is derived from voluntary contributions and is applicable solely to religious or charitable purposes.

To secure exemption under clause (i) or clause (ii) of section 4 (3) the income of religious or charitable institutions and income derived from property held for religious or charitable purposes need not be actually spent on religious or charitable purposes *in the year of receipt*. It is sufficient if it is set aside for those purposes. Where a trust exists the income-tax authorities are not required to satisfy themselves that it is so applied. In the case of *mixed* trusts, the income-tax authorities are required to enquire into the application of the income. Where property is held in part only for religious or charitable purposes a proportionate share of any expenses incurred on management should be considered as applied to those purposes.

To remove doubts regarding the application of these two clauses, read with the definition of “charitable purposes,” to universities and

other educational institutions the special exemption under section 60 of the Act mentioned in paragraph 16 (9) was made. It is to be noted that that exemption applies to the portion of the income of such institutions "derived from fees and other receipts of a similar character" and that the exemption does not apply at all in cases where such institutions are maintained "for purposes of profit."

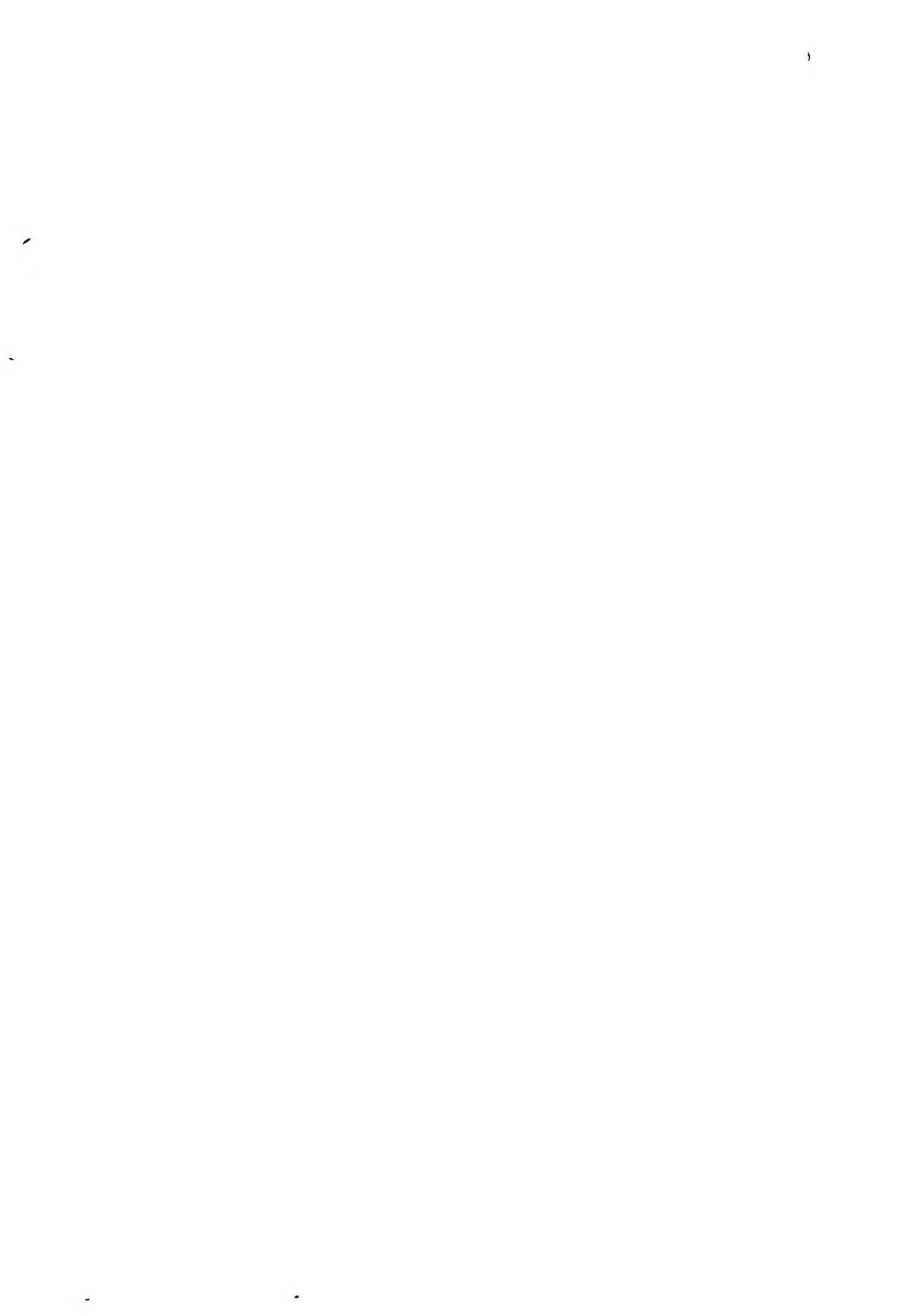
Attention is also invited to the exemption mentioned in paragraph 16 (3) of scholarships granted to meet the cost of education in the hands of the recipients of the scholarships.

18. Exemption of Provident Funds.—Under section 4 (3) (iv) the interest on securities held by certain provident funds, under section 4 (3) (v) capital sums paid as accumulated balances at the credit of subscribers to such funds, and under section 15 (1) contributions paid by subscribers to such funds up to a certain limit are exempt from the tax. The words "accumulated balance" are intended to include not only contributions and subscriptions but also interest thereon. These provident funds are only those to which the Provident Funds Act of 1897 applies, that is the provident funds of public servants or quasi-public servants, the constitution and control of which are regulated by the Provident Funds Act and the rules made thereunder. The only other Provident funds which possess these privileges are those which comply with the provisions of the Provident Insurance Societies Act of 1912, or which have been exempted from the provisions of that Act. There are few such funds, and in general it may be said that these privileges are not conferred upon the private Provident Funds of firms and companies which are not at present regulated by any law.

These remarks refer to the money in the funds and to the payments by subscribers and contributions made by employés to these funds. The contributions by employers to *Provident Funds* stand on a totally different footing and are dealt with in paragraph 45, but the special privileges conferred by these particular sections do not apply to any funds which have not a recognised legal footing.

A special exemption has been granted (see paragraph 16 (13)) in the case of Railway Provident Funds but this applies only to the gratuities paid out of these funds in the event of the retirement or death of the subscribers.

19. Meaning of the word "securities" as used in section 4 (3) (iv).—The definition of the phrase "interest on securities" in section 8 of the Act should not be applied to determine the interpretation to be given to these words in section 4 (3) (iv), since the words as used in section 8 are in a specially restricted sense and do not cover, for example, interest on so typical a form of security as a mortgage. Nor should the meaning of the word "securities" in section 4 (3) (iv) be restricted to the ordinary limited legal sense in which it must always have reference to a loan. Provident Funds are entitled to invest in any trustee security, and it has not been the intention of Government to discriminate between the various classes of investments which are thus legally authorised. The word "securities" in section 4 (3) (iv) should therefore be interpreted as covering all securities mentioned in section 20 of the Indian Trusts Act.



20. Perquisites or benefits not capable of conversion into money.—The provision in section 3 (2) (ix) of the Act of 1918 that “any perquisite or benefit which is neither money nor reasonably capable of being converted into money” was not liable to tax, has been omitted in the Act, as the existence of that provision made it impossible to assess to income-tax, for example, rent-free residences in cases where the assessee had not the power to sub-let, while rent-free residences were liable to the tax where the assessee had the power to sub-let.

Under section 7 (1) of the Act, all perquisites received by an employé in lieu of or in addition to salary or wages are liable to the tax. House-rent allowances and the value of rent-free quarters form additions to the remuneration of an employé; and even where residence in a particular town or building is necessary for the proper performance of the employé's duties, such allowances or perquisites cover expenses of a personal character which the employé would otherwise have to incur. They do not therefore “meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit” and are therefore not covered by the exemption in section 4 (3) (vi) of the Act and are taxable under section 7 or section 12.

Two conditions have to be fulfilled before the exemption specified in section 4 (3) (vi) can apply. The expenses incurred by the employé must be wholly and necessarily incurred in the performance of his duties as an employé; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expense thus caused to the employé, and that extra expense only. It is thus a question of fact in each case whether a house-rent allowance or the value of rent-free quarters is exempt from the tax, but the following examples will serve to indicate the lines on which the decision should be made:—

- (a) A currency officer is granted rent-free quarters in his currency office. Even though his residence in that office is necessary for the proper performance of his duties, he will be liable to the tax on the value of his rent-free quarters, since he would in any case have had to provide himself with a residence, and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties of an office or employment of profit.
- (b) A firm in Calcutta makes a practice of providing its employés with rent-free quarters, and houses some of its employés in its business premises as resident clerks. The employés of the firm, including the resident clerks, will, as in the previous case, be liable to income-tax on the value of their rent-free quarters.
- (c) A Government office has its headquarters in Bombay, but proceeds for some months in the year elsewhere, and grants its ministerial establishment house-rent allowances or rent-free quarters in the place to which it proceeds with the specific object of providing for the maintenance of a second and, from the point of view of the grantees, unnecessary residence in order that they may perform their duties there. The allowance or the value of rent-free quarters will be exempt from income-tax.

In all cases where rent-free houses form part of the perquisites of an employé, the cash value of such a house to the occupier should, in no case, be deemed to be more than 10 per cent. of the salary of the employé.

* 21. *Casual gains.* Section 4 (3) (vii).]—In order to obtain exemption as “casual,” profits must comply with two conditions:—

- (1) they must not be the proceeds of a profession, vocation or employment, or arise from business, that is, from “any venture or concern in the nature of trade, commerce or manufacture,” [See section 2 (4)], and
- (2) they must not be annual.

Both these conditions must be fulfilled. The exemption also is specifically not to apply to any gratuity to an employé for services rendered so as to avoid the possibility of any ambiguity in connection with the use of the word “gratuity” in section 7 (1). The following are illustrations of the effect of the provisions of section 4 (3) (vii):—

- (1) A purchases a house with a view to re-selling it at a profit. His profits from the transaction are liable to income-tax (even although it be an isolated transaction). B purchases a house for his own residence and later on sells it at a profit. His profit is not liable to the tax.
- (2) A wins a prize in a lottery or a bet on the race course. His receipts therefrom are not taxable. B is a book-maker. His profits from betting are taxable.
- (3) A is a professional beggar. His receipts from mendicancy are not exempted from the tax by this sub-section.
- (4) A makes a practice of speculating in the purchase and sale of shares. His profits therefrom are liable to the tax. B purchases Indian War loan 1929-1947 at 95 redeemable at par. The premium received on redemption after a period of years is not liable to the tax. On the other hand, the yield from Treasury Bills arising from their issue at a discount and repayment at par after 12 months or some shorter period is liable to the tax under section 12, though as this yield is not interest, the tax is not deducted at the source under section 18 (3).
- (5) A man writes a book. His receipts from its sale are taxable.
- (6) Lump sum legacies are exempt; annuities granted under a will are not exempt.

22. *Income-tax Authorities.* (Section 5.)—(1) The *Board of Inland Revenue* is appointed by the Governor General in Council. Its specific powers are mentioned in the various sections, e.g., section 2 (6), 2 (ii) (b), 5 (5), 18 (6) and 59. Rules for carrying out the purposes of the Act are made by the Board of Inland Revenue which also issues instructions regarding the interpretation of the provisions of the Act and the rules, and is entrusted with the general administration of the Act.

(2) The head of the Income-tax Department of a province is the *Commissioner of Income-tax* who is appointed by the Governor General in Council. The rest of the income-tax staff in a province are subordinate to him and they are appointed and dismissed by him. His power

of appointment and dismissal is, under section 5 (4) "subject to the control of the Governor General in Council," but the Governor General in Council exercises this control through the local Government under the provisions of the following order:—

"The Governor General in Council desires to utilise the agency of the Governor in Council of each Governor's province in the following matters only in relation to income-tax:—

- (i) the appointment by a Commissioner of Income-tax of any person to the substantive post of Assistant Commissioner of Income-tax or Income-tax Officer shall be subject to the previous approval of the Governor in Council.
- (ii) the appointment by a Commissioner of Income-tax of any Officer who has been dismissed from office by the Commissioner of Income-tax shall have a right to appeal to the Governor in Council."

While as regards the appointment or dismissal of such officials the Commissioner is subject to the control of the local Government, he has full power to specify the functions to be performed by each official and the areas, persons and classes of income in respect of which these functions may be exercised.

The specific powers conferred upon him in regard to income-tax assessments are specified in sections 28 (1), 32 (2), 33, 37, 54 (2) Proviso, 64 (3) and 66 of the Act. In particular he is vested with power under section 33 to review any orders passed by any income-tax official, and he alone may, under section 66 of the Act, state cases for the opinion of a High Court.

(3) The functions of *Assistant Commissioner of Income-tax* are mainly appellate, but they also exercise supervision over the work of the Income-tax Officers. The particular powers conferred on them by the Act are set out in sections 28 (1), 30 (2), 31, 37, 38, 39, 42 (2) and 53.

(4) *Income-tax Officers* are the assessors. While section 64 of the Act specifies the particular Income-tax Officers by whom assessments shall be made i.e., prescribes that assessments shall be made in the case of a business by the Income-tax Officer of the area where the principal place of business is situated, and in all other cases by the Income-tax Officer of the area in which the assessee resides, sub-section (4) of that section provides that every Income-tax Officer shall have all the powers conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed. This particular provision was inserted mainly in order to permit of enquiries being made into the profits of a branch business by the Income-tax Officer of the place in which the branch is situated and in order to enable every Income-tax Officer to make enquiries regarding all income, profits and gains arising or accruing within the area to which he is posted, even though the assessment in respect of the particular income, profits or gains may not be made by him. Income-tax Commissioners should therefore secure by issuing instructions or otherwise that there is no overlapping in this matter and that the same person is not assessed to income-tax by more than one Income-tax Officer but should at the same time secure that all Income Tax Officers shall give the utmost assistance to the

assessing Income-tax Officer in regard to any property, income profits or gains within their respective areas which are liable to assessment elsewhere.

While it is intended that the work of making assessments, of hearing appeals and of passing orders in review shall ultimately be carried out by separate officials known as the Income-tax Officer, the Assistant Commissioner and the Commissioner, as a complete whole time staff for income-tax work has not yet been appointed in many of the provinces, section 5 (4) makes provision for the continuance, until such whole time staff is engaged, of the existing system under which individual officers exercise the powers of an assessing authority in respect of particular classes of income and of an appellate authority in respect of others, while the reviewing authority is in certain cases also the appellate authority.

While the income-tax staff will as a rule be appointed in provincial cadres, there are certain classes of cases for which it may be advisable that assessments should be made by an all-India staff. Such, for example, are the cases of military officers and of officers of other departments serving directly under the Government of India who are liable to transfer from one province to another; and there may be other cases such as the assessment of railway companies which at any time it may be considered advisable should be dealt with by a special officer for the whole of India. Sub-section (5) of this section has been inserted to make provision for the appointment of special officers in such cases.

23. Salaries. (Section 7.)—The income taxable under this head includes not only fixed salaries or wages and annuities or pensions, but also any fees, commissions, perquisites or profits received in lieu of, or in addition to, salaries or wages which are paid to an employé by or on behalf of any employer. Under the Act of 1918 the income chargeable under this head applied only to "salaries" in the above sense when paid by or on behalf of Government, a local authority or company, any other public body or association or by or on behalf of any private employer who had entered into an agreement with the Income-tax Officer to recover the tax on behalf of Government, but under the present Act it applies to all salaries paid by or on behalf of every private employer, the obligation to deduct income-tax from salaries being under section 18 (2) of the Act an obligation on every employer.

The proviso to sub-section (1) applies only to compulsory deductions made under the authority of Government and not to compulsory deductions made by other employers (see Paragraph 18). The amount exempted under this proviso has, however, to be taken into account under section 16 (1) in computing the total income of an assessee for the purposes of determining whether he is liable to tax and the rate at which he is to be assessed. An assessee, for example, who has a salary of Rs. 180 per mensem or Rs. 2,160 per annum and from whose salary a compulsory deduction is made by the authority of Government of Rs. 300 per annum of the nature referred to in this proviso is liable to pay income-tax on Rs. 1,860 at the rate applicable to an income of Rs. 2,160.

Under section 58 of the Act this proviso does not apply to super-tax that is, no allowance of this kind is made for super-tax purposes.

'As regards "perquisites" see paragraph 20.'

Language rewards and fees for conducting an examination, when the conduct of the examination is not part of the officer's ordinary duties, are not chargeable as " salaries," but as income " from other sources " under section 12.

For classes or portions of " salaries " which are entirely exempt from tax, see paragraphs 16 (1), (2), (4), (5), (10), (11), (12), (13), (14), (15), (16), (18) and (19).

Income under this head is always included in the income of the year in which it is received irrespective of the period in respect of which it was earned, with the solitary exception that where an officer of Government takes an advance of pay, the tax is not chargeable on the advance, but the tax is charged on the full salary of the month in which the advance is recovered by deduction without any regard to the deduction.

A portion of a salary withheld under the orders of a Court is liable to tax.

24. Salaries paid in India but outside British India. [Section 7 (2).]

—See paragraph 1. This sub-section makes chargeable, under this head, salaries paid from Indian revenues to Government employés in any part of India and salaries paid by a local authority established in exercise of the powers of the Governor Général in Council. All servants of Government or of such local authorities are, therefore, liable to pay tax on their salaries if they are employed in any part of India and irrespective of their nationality.

The words " or any servant of His Majesty " in this sub-section were inserted in the Act of 1918, so as to bring all servants of the Crown, whether British subjects or not, within the purview of this sub-section, on the ground that it seemed unnecessary to give to persons who were not British subjects specially favourable treatment which was not accorded to British subjects.

Under exemptions Nos. 14, 15 and 16 quoted in paragraph 16 allowances or salaries paid in the United Kingdom to officers on leave or duty in that country and leave allowances or salaries drawn from any colonial treasury by an officer on leave or duty in the colony and the pensions of officers drawn from any colonial treasury or paid in the United Kingdom are exempt from the tax. The salaries and allowances of the employés of firms and companies should also be exempted from income-tax in those cases only where a private employér is bound under the terms of a contract, or has elected as a general measure to pay leave allowances to his employé's in England. Where on the other hand there is no such obligation or general practice, such allowances should be liable to taxation. The same criterion should be applied to the taxation or non-taxation of pensions.

Pay and allowances drawn by officers from the Indian revenues which are earned by them by service outside India are not liable to the tax unless they are drawn or received in India.

The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States are not chargeable to income-tax under this section unless they are drawn or received in British India; but the leave allowances and pensions of such officers are, leaving the question of the place of their payment aside, chargeable to income-tax. The Government of India recover contributions at fixed rates from the

Indian States to meet the cost of leave allowances and pensions of officers in foreign service and make themselves responsible for paying the leave allowances and pensions of their employés earned in foreign service.

25. *Interest on securities.*—As regards sterling securities, see paragraph 15.

The interest chargeable under this section is the interest only on securities of the Government of India or of a local Government or on debentures or other securities for money issued by or on behalf of a local authority or company. It does not include the interest on debentures issued by firms, associations, clubs, or individuals the interest on which is chargeable under sections 10 or 12.

With reference to the first proviso the Government of India War Bonds, 1920, 1921, 1922, 1923, 1925 and 1928, 5 per cent. loan 1945-55, Five-year 6 per cent. Bonds, 1926, Ten-year 6 per cent. Bonds, 1930, and Ten-year 6 per cent. Bonds, 1931, have been issued income-tax free.

The second proviso to this section prescribes that where a local Government issues a security as income-tax free, the income-tax on the interest thereon shall be payable by that local Government. So far as investors are concerned, therefore, securities issued income-tax free whether by the Government of India or by local Governments, stand on exactly the same footing, that is, income-tax is not payable on the interest received therefrom by the assessee, but the interest received therefrom is taken into account under section 16 (1) of the Act in determining the total income of the assessee for the purpose of deciding whether he is liable to income-tax and also for determining the rate at which he shall pay income-tax on his other income. The same remarks apply to Government securities purchased through the Post Office and held in the custody of the Accountant General, Posts and Telegraphs (see paragraph 16). Super-tax is, however, payable by the recipient in respect of such interest, since, under section 58 of the Act, the provisos to this section do not apply to super-tax.

For interest on other securities, which are entirely exempt from tax see paragraphs 16 (6), (7), (8), and (17).

For interest on securities held by Provident Funds, etc., see paragraph 19.

The interest on securities held by a Co-operative Society is liable to income-tax (see paragraph 16).

Where an assessee with an income from securities has obtained a loan from a bank for purchasing those securities, he may, on obtaining a banker's certificate as to the amount of the interest on his loan, set-off the interest that he pays against the interest that he earns from the securities. It must be clear, however, from the certificate that the borrowing was definitely and solely for that purpose.

Income-tax (but not super-tax) in respect of income chargeable under this head is deducted at the source [section 18 (3)].

26. *Property.* (Section 9.)—The tax is payable under this head in respect of property consisting of any building or lands appurtenant to a building by the owner of such property. Lands not attached to a building are not chargeable under this section. The income derived from vacant lands let out in urban areas for the purpose, e.g., of storing materials is chargeable to the tax under section 12.



Buildings or lands occupied by the owner thereof for the purposes of his own business are not liable to the tax under this head. This particular provision was inserted in order to avoid the unnecessary complications in previous Acts under which the annual value of such property was liable to the tax under this head and a corresponding deduction was allowed to the owner under the head "business" (section 10).

It is to be noted that it is only the owner, who is liable to pay tax under this head. Where a person derives an income from house property which he holds on lease, such income is chargeable under section 12—"other sources."

27. Property—Definition of annual value. [Section 9 (2).]—The tax is, under the head "property," chargeable in respect not of any actual rental or cash received, but of the "bona fide annual value." The *bona fide* annual value of a building is the full market value at which the building could be let from year to year irrespective of any charges by way of municipal rates or taxes thereon. It therefore, differs from the actual annual rent payable on a long term lease or the actual rent payable on a yearly lease under a privileged rental or with tenant's liability to pay owner's rates or taxes. The only limitation on taking the full market value is that in cases where the property is in the occupation of the owner for the purposes of his own residence the "annual value" is restricted to a maximum of 10 per cent. of the "total income" of the owner. The phrase "total income" in this definition has the meaning given to it in section 2 (15) of the Act, viz., income, profits and gains of such owner from all sources to which the Act applies and, therefore, does not include income derived from any of the sources specified in section 4 (2) of the Act, (such as, for example, "agricultural income"), which are exempt from the tax.

28. Deductions allowed in respect of property.—It is to be particularly noted that, as stated in paragraph 49, no deductions are permissible on account of any municipal or local rates or taxes in respect of property. Nor can any allowance be made for brokerage for raising loans on mortgages and legal charges relating thereto since such charges are in the nature of capital charges. The only deductions from the "annual value" permissible are those specified in section 9 (1).

29. Proof of expenditure where deductions are claimed in respect of property. [Section 9 (1).]—The allowance on account of repairs, [viz., one-sixth of the annual value in the case specified in clause (i), and in the case specified in sub-clause (ii), the amount permitted by that clause] is a fixed allowance which should be granted without proof of the actual expenditure in any year and irrespective of the amount of such expenditure. The allowances on account of the annual premium paid to insure the property against risk of damage or destruction or on account of interest on mortgage or annual charge or ground-rent or land revenue or of collection charges must, however, be supported by proof of the actual expenditure.

30. Property. Insurance deductions. [Section 9 (1) (iii).]—The only insurance deduction permissible is the amount of the annual premium paid to insure the property against risk of damage or destruction. In some cases owners insure against loss of rent. Where an owner asks for an allowance on account of the annual premium for such insurance it should be allowed if such owner agrees to pay tax on any amount recovered from

the insurance company. Where no such allowance is claimed or allowed tax is not to be charged on the amount recovered from the insurance company.

31. *Property. Collection charges.* [Section 9 (1) (vi).]—As regards collection charges rule 7 fixes 6 per cent. of the annual value as the maximum amount permissible. Where a house has remained vacant for a period, this maximum, of course, would never be reached and in many cases there will be no collection charges. The *maximum* amount permissible should be reduced in all cases where a house has remained vacant for a period to 6 per cent. of the annual value as diminished by the amount allowed in respect of vacancies. Proof must always be given of the collection charges having been incurred. Rule 7 simply provides that, where there is proof of collection charges, such charges may be allowed subject to the provision that in no case shall the amount allowed on account of collection charges exceed 6 per cent. of the annual value.

32. *Property. Allowance in respect of vacancies.* [Section 9 (1) (vii).]—No fixed rule can be laid down regarding the allowance to be granted in respect of vacancies under clause (vii). Property is taxed on the “annual value” which, as noted above, is the commercial rent of a house—the rent which it would fetch if let by the year. Where the property is let at an annual rental corresponding to the annual value it would be fair to allow a proportionate deduction corresponding to the period of the vacancy, that is, if it were vacant for half the year, half the annual value might be allowed. Property may be let on short lease for a period less than one year and fetch a rent for that period far in excess of what has been fixed as the “annual value,” and in such cases no allowance obviously can be given. Where a claim is made on account of vacancies, the owner should be asked to state what the actual rental was that he had received for the period of the year during which the property was let and the amount allowed on account of vacancies should, under no circumstances, exceed the amount by which the rent received falls short of the annual value. There can, of course, be no allowance in connection with any property which is reserved by the owner for his private occupation. A claim on account of vacancies can only be entertained in connection with property that is usually let.

33. *Property. Limitation of total allowance.* [Section 9 (1).]—The proviso to section 9 (1), that the aggregate of the allowances made under that sub-section shall in no case exceed the annual value, was inserted owing to the new provision in section 24 providing for the set-off of losses under one head against income, profits or gains under any other head. Instances have occurred of buildings situated in extensive grounds or on valuable sites being mortgaged for sums the interest on which is far in excess of the “annual value.” The result of this proviso is that the annual value can in no case be reduced to a *minus* sum owing to the allowances, and that there can be no loss under this head to be set against income, profits or gains under any other head.

34. *Method of accounting for assessing income, profits and gains under sections 10, 11 and 12. (See section 13.)*—Owing to a High Court ruling, referred to in paragraph 12, regarding the definition of the word “income” the provisions in the present Act have been so worded as to make it clear that as regards income, profits or gains from business, pro-

fessional earnings or the other sources mentioned in section 12, no uniform method of accounting is prescribed for all tax-payers, and that every tax-payer may, so far as is possible, adopt such form and system of accounting as is best suited for his purposes. The only restrictions are that the method adopted must be one that clearly reflects the income of the assessee in respect of the fixed period of "the previous year" and that it is the one regularly employed by him for the purposes of his business. If the tax-payer does not regularly employ a method of accounting which clearly reflects his income for the "previous year," the computation will be made in such manner as in the opinion of the Income-tax Officer does clearly reflect it.

There are two main systems of keeping accounts. There is firstly the cash basis system, where a record is kept of actual receipts and actual payments, entries being made only when money is actually collected or disbursed. There is secondly, the mercantile accountancy system under which a profit and loss account is maintained and a comparison is made of the value of the stock in hand at the beginning and at the end of each year. Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transactions irrespective of the date of payment. When goods are sold, for example, an entry is made at once on the receipt side of the account, although no cash may be received at the time in payment of such goods; and an entry is similarly made on the debit side when a liability is incurred although payment on account of such liability may not be made at the time. It will be the method of accounting adopted for or by the tax-payer, therefore, that will determine the period within which any item of gross revenue or any deduction therefrom is to be accounted for, and which will determine whether particular allowances are or are not permissible.

It is for this reason that the Act does not contain a complete statement of the deductions or allowances that are permissible or not permissible in working out business profits or professional earnings, since certain allowances or deductions can only occur where the mercantile accountancy system is adopted. There can, for example, be no allowance for "bad debts" where the cash basis is the method of accountancy employed. Under the mercantile accountancy system, as noted above, an entry is made on the receipt side when a sale is concluded, although the money on account of such a sale has not been paid and in making up the accounts at the end of the year such entries are treated as receipts, and the tax is levied on these "book profits." It may happen that some of these "book profits" cannot be recovered; they are written off as "bad debts" when found to be irrecoverable; and since such "book profits" have been included in the income assessed to income-tax, the "bad debts" must be written off against the "book profits" in the year in which they are written off in the accounts as irrecoverable. Where the cash system is adopted, there can be no "bad debts."

Again, it will be the method of accounting that will determine the particular year in which allowances common to both systems of keeping accounts may be made. In sub-section (2) of section 10 of the Act provision is made for allowances on account of rent paid, interest paid on capital borrowed, the amount of premium paid in respect of certain classes of insurance, amount paid on account of current repairs, etc., and

sub-section (3) of section 10 states that the word "paid" means "actually paid" or "incurred" according to the method of accounting upon the basis of which profits or gains are computed, i.e., where the cash basis is adopted, it will be the date of actual payment that will determine the year in which such allowances may be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay accrued.

35. *Method of accounting "regularly employed."* (Section 13.)—The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible, be the method adopted for working out his profits for income-tax purposes; but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it is such as to reflect clearly the taxable profits for the "previous year." In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two instances of such cases are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and their customers. Provided that the same system is continuously employed, there appears to be no reason why this particular practice should not be considered to be a "method of accounting regularly employed." Again there are cases where the various branches of a business are only closed down once in three or five years and where the accounts of the branches are not annually incorporated in the headquarters business's accounts. In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing down in particular years.

The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income-tax Officer in considering it should, as in the similar case of a demand for a change in the "previous year" (paragraph 5), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change. While section 13 leaves it to the discretion of the Income-tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed, the discretion of the Income-tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, i.e., it may be made one of the grounds of appeal in contesting the assessment of the profits.

36. *Business deductions. General.*—While, as stated in paragraph 34, it is not possible, owing to the variety of accounting systems, to prescribe exhaustive lists of deductions that are or are not permissible in the case of all businesses, section 10 (2) contains a list of allowances that are permissible in the case of all businesses. The following is a list of the deductions that are not permissible in the case of any business whatever the system of accounting may be that is adopted:—

reserves for "bad debts" or for "provident" or other funds or any other purpose such as the equalisation of profits or dividends;





- expenditure of the nature of charity or presents;
- expenditure of the nature of capital;
- cost of additions to or alterations, extensions or improvements of, any of the assets of a business;
- sums paid on account of income-tax or super-tax in India or elsewhere or any tax levied by any authority other than local rates or municipal taxes in respect of the portion of the premise, only which is used for the purposes of the business;
- drawings or salaries of the proprietors or partners;
- interest on the proprietors' or partners' capital including interest on reserve or other funds;
- private or personal expenses of the assessee;
- rental value of property owned and occupied by the owner of a business for the purposes of the business;
- losses sustained in former years;
- any loss recoverable under an insurance or a contract of indemnity;
- depreciation of any of the assets of the business other than the depreciation allowed under section 10 (2) (vi);
- any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

37. Business deductions. Irrecoverable Loans. [Section 10 (2).]—Where an assessment is made of profits or income from a banking or money lending business, loans which cannot be recovered should be deducted from the assessed profits of such business at the time when such loans can be definitely proved to be irrecoverable. For example, if a banker has lent out of 5 lakhs of rupees and received Rs. 50,000 as interest but has during the same year lost an irrecoverable loan of Rs. 25,000, he should be assessed on Rs. 25,000. Similarly, if the same banker receiving Rs. 50,000 as interest on his loans suffers a loss of an irrecoverable loan amounting to one lakh during the same year, the income to be assessed to income-tax from the money-lending business in that year will be *nil*. These examples will apply whether the assessee had previously been assessed to income-tax or not.

This instruction will also apply to the assessment of other traders, where loans have been made in connection with the business and in which the loans are of the nature of the business and the loss is a true trading loss.

The irrecoverable loans in the sense referred to in this paragraph are sometimes confused with the "bad debts" described in paragraph 34, but they are of a totally different nature. Money lent out on interest is the stock-in-trade of a money lender or banker and the loss of such stock-in-trade can clearly be regarded as a trading loss like the loss of the stock-in-trade of any other trader where the loss is not covered by insurance. In settling claims of this nature the question has always to be considered whether money-lending is, or is not, a part of the business of the trader in question. The investment of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading.

38. *Allowance on account of rent of business premises.* [Section 10 (2) (i).]—The allowanee referred to in this clause is only in respect of that portion of the premises in which the business is carried on and the same limitation applies to all allowanceees relating to premises or buildings in clauses (ii), (iv), (v), (vi) and (viii). Where premises are owned by the owner of the business, no allowance of course is permissible since the owner is not liable to pay tax on the annual value of such premises under section 9. Where the trader resides in a part of the business premises, the full rental cannot be set against the profits and the Income-tax Officer must, in each case, determine the portion of the rent that may so be set off.

39. *Allowances on account of repairs of business premises.*—Where the assessee is himself the owner of his business premises, he is allowed as a deduction the amount spent on repairs each year on the portion of the premises used for the purposes of the business under section 10 (2) (v); where he is the tenant of the premises, he is, under section 10 (2) (ii), allowed the amount expended by him on repairs if his lease requires him to execute repairs. Where the premises are occupied partly as a residence and partly for the purposes of a business, the same proportion of the disbursements on repairs should be permitted to be deducted as is taken in calculating the rent permissible under section 10 (2) (i).

40. *Business—Allowance in respect of borrowed capital.* [Section 10 (2) (iii).]—The allowance under this clause can only be given where payment of the interest is not in any way dependent on the earning of the profits. It cannot be allowed, therefore, in respect of any borrowings the interest on which is not payable unless profits are earned or the interest on which varies according to the amount of the profits earned. In all cases it will be a question of fact whether the payment of interest is or is not actually dependent on the earning of profits. No allowance can be made in respect of the share capital of companies or of the capital put into a firm by the partners; but a company is entitled to an allowance of the interest paid on its debentures and a firm to an allowance of interest on money borrowed under a mortgage. On the other hand, a firm alleging that it has no independent capital and that it is working only on capital lent by the partners at a definite rate of interest which must be deducted from the earnings of the firm before its profits can be declared, is not entitled to allowance under this section unless definite proof is given that a particular partner has made a legal loan to the firm, i.e., a loan under an instrument on which he can sue and under which interest at a fixed rate is to be paid to him annually irrespective of the earning of any profits.

Salaries or commission paid to a partner can, under no circumstances, be treated as a business expense.

As regards the Mutual Benefits Societies referred to in the explanation to this clause, none such have yet been prescribed by rule and no action can be taken until a rule is made.

41. *Business—Allowances in respect of insurance premia.* [Section 10 (2) (iv).]—The allowanceees under this clause are restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, and no allowance can be made on account of premia in regard to



other insurances. Further, any sums not actually expended on *premia* but merely set aside by a company or firm as an insurance fund are simply a particular description of reserve and no allowance or deduction can be given in respect of such reserves.

This clause again, does not allow as a business deduction premia on account of insurance against loss of profit. Where, however, the owner of a business asks for any such allowance, it should be granted upon the assessee agreeing in writing to pay tax on the amount recovered from the insurance company in respect of such policy. It will, therefore, be left in each case to the assessee to decide whether he should claim an allowance on account of premia for such policies and should pay tax on what he receives from the insurance company; where no allowance is asked or allowed in respect of such policy, any sums received from the insurance company on account of the policy will not be liable to tax.

42. *Allowances in respect of depreciation.* [Section 10 (2) (vi).]—The allowances permissible under this clause are prescribed in rule 8 and the information that must be furnished in order to obtain an allowance is set out in rule 9. It is only the particular classes of buildings, machinery, plant or furniture mentioned in rule 8 in respect of which the depreciation allowance can be claimed, and the buildings, machinery, plant or furniture for which depreciation allowance is claimed must be used for the purposes of the business. No allowance can be claimed on account of depreciation, for example, of any portion of a building which is used as a residence by the assessee. Further, the buildings, etc., must be the property of the assessee. No allowance can be claimed if they are leased.

The percentage allowance is on the original cost of the machinery, etc., to the assessee and not the original cost to a previous owner if it had been purchased from a previous owner. The rates of depreciation allowance fixed in rule 8 are fixed rates for the whole of India. Depreciation at those rates must be allowed each year when there are sufficient profits, and only the excess of the depreciation allowance over profits can be carried forward from year to year until absorbed, and this practice must be followed whether the depreciation allowance is adjusted in the accounts of the assessee or not and irrespective of the amount shown in the accounts. It is for this reason that in the form of returns of income prescribed in rules 18 and 19 any amounts entered in the accounts of an assessee for the depreciation of any of the assets of the business must be written back as the amount allowed for income-tax purposes is the amount prescribed in the rules and not the amount entered in the books of the assessee.

This clause provides for the depreciation of furniture, but it may not suit the convenience of particular traders to ask that a depreciation account should be kept up for petty items of furniture and a depreciation allowance on account of furniture should, therefore, be granted only in cases in which it is asked for, in which event the cost of replacement should not be allowed; where such depreciation allowance is not asked for, the cost of replacement should be allowed in the year in which the furniture is replaced.

Whatever depreciation allowances are granted, it will be necessary to maintain an account showing the original cost to the assessee of the plant, the amount of the annual allowance, the amount of the allowances already granted and the balance still to be allowed.

No depreciation allowances are granted to railways on account of depreciation of their rolling stock as renewal charges are allowed as a business deduction.

As stated in paragraph 36 no allowance can be made on account of the depreciation of the assets of a business other than the particular items mentioned in this sub-clause and in rule 8. No depreciation allowance, for example, is permissible to provide for the amortisation of capital sums paid on account of the purchase of the lease of a mine or for the depreciation of wasting assets such as coal. Depreciation allowances should, however, be allowed for sinking shafts, tramways and sidings in coal mines, which are included in the term "plant."

Shares and securities held as part of the capital of a business should be similarly dealt with. So long as shares or securities continue to be held by a company, firm or individual as part of his or its capital, any depreciation or appreciation in their market value is outside the scope of the Income-tax Act; and similarly, when the value of shares and securities so held (for example, the securities constituting the reserve fund of a bank or other company) is realised, the transaction is a capital transaction, and no account should be taken for income-tax purposes of any profit or loss resulting from the sale. On the other hand, where an individual, company or firm habitually uses part of his or its resources in the purchase of securities or shares with a view to obtaining profit on their sale and the subsequent reinvestment of the proceeds, the individual, company or firm is, in altering his or its investments, carrying on a trade for the sake of obtaining profit therefrom, and the profits secured or losses incurred are trade profits or losses which must be taken into account in determining the assessment to income-tax. It will, therefore, always be a question of fact to be decided on the merits of each case whether the changes in investment are of sufficiently systematic a character to constitute the exercise of a trade, but if they are, the profits therefrom are liable to assessment, and an allowance must be made for any losses in calculating the amount of tax payable.

43. *Business—Obsolescence allowances.* [Section 10 (12) (vii).]—It must be particularly noted that the allowances under this clause can only be given where the machinery or plant becomes obsolete. Where machinery or plant is sold for reasons other than that it was become obsolete, no allowance can be given. Where a machine is sold no allowance can be given if the facts present evidence that the machine is not obsolete.

The amount allowed for obsolescence is, again, calculated upon the original cost to the owner. The amount to be given is the amount of such original cost to the owner as reduced by the depreciation allowances under clause (vi) and the amount for which the machine is actually sold or its scrap value. For example, a machine costing Rs. 10,000 with a 10 years' life is sold after 5 years for Rs. 2,000. The original owner gets Rs. 5,000 for depreciation and nothing for obsolescence as the machine is not scrapped or sold on account of obsolescence. The second owner gets an allowance based on a 5 years' life, and as the cost of the machine to him was Rs. 2,000, his annual allowance is Rs. 400. If through some flaw the machine is scrapped as useless after three years, then in the year in which it is so scrapped the second owner can claim Rs. 800 for obsolescence. If, on the other hand, the machine lasts 5 years or more in the hands of the second owner, no allowance for obsolescence is permissible.

44. *Allowance on account of rates or taxes.* [Section (10) (2) (viii).]—The allowance under this clause covers only the land revenue and local rates or municipal taxes paid in respect of the portion of the premises used for the purposes of the business. No allowance can be given on account of any other rates or taxes whatsoever. All rates and taxes, therefore, whether levied on the profits of a business or which are charged from the proprietor of a business in respect of anything other than the actual portion of the premises used for the purposes of the business, must be disallowed. (See also paragraph 49 and case No. 6.)

45. *Miscellaneous business deductions.* [Section (10) (2) (ix).]—While the Act makes no provision for contributions by employers to private provident funds constituted for the benefit of their employés being exempted from the tax (see paragraph 18), contributions to such provident funds by the employers should be allowed as a business expense in all cases where the funds are constituted as irrevocable trusts and where the employers' contributions cannot be recovered by the employers. Where, however, such funds remain in the hands or under the control of the employers, no contributions by the employers can be allowed as a business expense.

The same remarks apply to superannuation funds or reserves for the purposes of providing pensions to ex-employés. Actual sums paid as pensions to ex-employés should, however, be allowed as a business expense where the pensionary payment is a fixed or recurring one, but no claims on account of "pensions" should be entertained where the "pensions" are paid to persons who have or who at any time had a share or interest in the business.

46. *Method of converting the net profits of sterling companies into rupees for the purposes of income-tax.*—Where the business of a sterling company is transacted entirely in India, there is no need for the Income-tax Officer to look at the sterling accounts as he can get a record and ask for a return of the transactions in rupees. He should act in the same way in cases where the profits of the Indian branch of a company operating in other countries can be separately ascertained. In the case of a company operating through local branches in different countries where the profits of the Indian branch cannot be ascertained separately but have to be deduced from the total sterling profits of the company from all its operations, the net profits of the company for the purposes of assessment to Indian income-tax should be converted into rupees at the rate of exchange ruling on the last day of the year to which the account relates unless the Income-tax Officer is able, by an examination of the accounts, to ascertain the average rate of remittances throughout the year and to deduce from that the rupee figure of profits.

47. *Premia on issue of shares.*—The premia received by a company on issue of shares are capital receipts, and, as such, not chargeable to tax. In the same way the cost of issuing shares is capital expenditure and cannot be allowed as a deduction for income-tax purposes.

48. *Income from "other sources."*—*Deductions.* (Section 12.)—The interest paid on money borrowed for the purchase of shares or securities can only be set against the income obtained from the shares or securities where it is proved either by a banker's certificate or otherwise that the borrowing has been definitely and solely for that purpose; but where such proof is afforded, an allowance should be given.

49. *Deductions on account of taxes paid.*—No deduction is permissible in computing the income, profits or gains on account of any taxes or rates paid in respect of such income, profits or gains. Section 10 (2) (viii) of the Act allows as a deduction from business profits sums paid on account of land revenue, local rates or municipal taxes in respect of premises used for the purposes of a business. This specific provision has been inserted because the local rates paid on account of such premises are usually in the nature of a payment for services rendered (*e.g.*, by supply of water, conservancy arrangements, *etc.*), but that allowance is closely restricted to a local tax or rate levied *in respect of the premises* used for the purposes of the business. No deduction is allowed for any other local rate or tax such as for example, local taxes varying according to the income or profits of a business. Nor is any deduction on account of a local rate or tax on property allowed from the annual value of property which is taxable under section 9. Similarly no allowance is permissible on account of income-tax or super-tax paid by an assessee. Where property, profits or gains are liable to taxation in other countries or by other authorities in British India all these authorities are taxing the same property or profits for different purposes. Attention is invited to the ruling of the High Court at Patna, (Case No. 6) in which it was held that the amounts paid for cesses by a person deriving an income from rents of collieries and from royalties on the amount of coal raised from the collieries are not to be deducted in computing the amount of his assessable income, and in which it was clearly stated that "the payment of a tax which is conditional on the making of an income and which has to be calculated on the amount of such income after it has come into existence cannot be said to be expenditure for the making of such income."

Reference is also invited to Case No. 7 in which the High Court of Madras held that in computing the profits of a non-resident company under the provisions of rule 33, the taxes payable in other countries in respect of the profits of the company are not to be deducted.

50. *Taxation of a Hindu undivided family.* [Section 14 (1).]—A Hindu undivided family is treated as a separate entity for income-tax purposes. It is taxed like an individual at a graded scale according to its total income and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate income. This applies even in cases where the amount of the income of the Hindu undivided family is less than Rs. 2,000 and is, therefore, not liable to taxation in the hands of the manager of the family. The same remarks apply to super-tax.

The taxation of the income of a Hindu undivided family thus differs from the taxation of the income of an unregistered firm since where the profits of an unregistered firm are not liable to taxation in the hands of the firm, such profits are taxed in the hands of the individual partners both for the purposes of income-tax [section 14 (2) (a) and section 16 (1)] and super-tax (section 55 proviso), and where the profits are taxed in the hands of the unregistered firm, the share of such profits of each partner is included in his 'total income' for the purpose of determining the rate at which he shall pay income-tax on his other income [section 16 (1)].

For the method of serving notice or requisition on a Hindu undivided family see paragraph 93.

51. *Taxation of a firm.*—For the difference between a registered and an unregistered firm, see paragraph 9.

While income-tax is leviable on the profits of a registered firm at the maximum rate (see Finance Act), and while under section 48 (2) a member of a registered firm is entitled to get a refund in cases where the maximum rate is greater than the rate applicable to his total income, it is desirable that, so far as possible, such refunds should be avoided. Where, therefore, the individual partners in a registered firm file their returns of personal income at the same time as the return of the income of the firm, the Income-tax Officer, on being satisfied that the whole of the profits of the registered firm are accounted for in these personal statements, should charge the partners direct at the rate appropriate to their total income. The liability of the registered firm for the tax assessed upon the profits of the firm will, however, remain unless and until the tax assessed upon the individual partners has been recovered from them.

For the method of setting-off a loss of profits of a registered firm against other income of a partner see paragraph 67.

In computing the total income of a member of a registered firm or unregistered firm for the purposes of income-tax or super-tax there should be included in that total income "such an amount of the profits or gains of the firm as is proportionate to his share in the firm." This particular phraseology has been adopted in section 14 (2) (b) and in the proviso to section 55 in order to make it clear that it is the proportionate share of a partner in the whole of the assessable profits of a firm that is to be taken into account in determining his total income, and not merely the amount that he removes from the possession of the firm. Some partnership deeds, for example, provide that the partners cannot remove more than a certain proportion of the profits in any year or, again, that a certain proportion of the profits must be distributed in charity. It is now made clear in the Act that it is the whole of his proportionate share in the total assessable profits of the firm that is to be taken into account and that that proportionate share cannot be reduced by any consideration of how those profits are utilised.

For the method of dealing with a change in the constitution of a firm see paragraph 70.

For liability in cases of discontinuance of business owned by a firm see paragraph 70.

For the method of serving notice or requisition on a firm see paragraph 93.

52. *Exemptions on account of life insurance.* (Section 15.)—Under the provisions of section 7 (1) proviso and section 15 an abatement of income-tax is given, after the assessment of the tax has taken place, on such portion of an assessee's income as may have been—

- (i) deducted from his salary under the authority and with the permission of the Government for the purpose of securing a deferred annuity to him or making provision for his wife or children (section 7 (1) proviso);
- (ii) paid by him to an insurance company in respect of an insurance or deferred annuity on his own life or on the life of his wife; or

(iii) paid by him as a contribution to any of the provident funds mentioned in paragraph 18:

Provided that the total amount on which an abatement will be permitted under this provision may not exceed one-sixth of the total income of the assessee.

It is to be particularly noted that the insurees in respect of which this concession is granted are insurances *on the life of the assessee himself or of his wife*, and not any other form of insurance whatsoever. The solitary exception is in the case of a Hindu undivided family in the case of which insurances are permissible *on the life* of any male member of the family or of the wife of any such member and not merely on the life of the head or manager of the family.

For the purpose of an abatement claimed by an assessee under this section insurance premia payable in sterling should be converted at the rate of exchange in force on the day on which the premium payment was made in cases where the assessee is unable to state the actual cost of remittance.

A claim for abatement under this section must, if the payment is made otherwise than by a deduction from salary, be supported either—

- (a) by the original receipt of the insuree company or fund;
- (b) where the claim is made by a servant of the Government or of a local authority, by a copy of the original receipt presented along with the original to the officer who pays the salary and attested by that officer who should, after such attestation, return the original with a note endorsed upon it that it has been produced and allowed for, a copy being attached to the bills sent with the list of payments; or
- (c) by a duplicate receipt or certificate of payment given by the insuree company or provident fund, provided a certificate is given that the original receipt is lost or is not forthcoming.

Where the Income-tax Officer is satisfied that none of the above prescribed documents can be produced without an amount of delay, expense or inconvenience, which, under the circumstances of the case, would be unreasonable he may accept such other proof of payment of the premium as he may deem sufficient.

Abatement on account of insurance may be given effect to by the person deducting income-tax from salary at the time of payment under section 18 (2.)

Where the payment on account of insurance premia, etc., is not claimed at the time when tax is deducted from salary, it may be claimed in the assessment and in the return given by the assessee under section 22 (2).

While strictly speaking abatements on account of insurance premia should only be made in assessing the income of the year in which the premia were paid, the rigid enforcement of this interpretation is likely to cause considerable inconvenience to assessors who desire that the abatement should be given effect to when tax is deducted from their monthly salary, particularly in cases where the premia have been paid to foreign companies towards the end of a financial year and the receipts for the



premia are not forthcoming until the following financial year. In such cases abatements of insurance premia may be allowed by officers responsible for deducting income-tax from salaries under section 18 (2) at the time of payment of the salary provided that the premia in respect of which abatement is claimed have been paid within six calendar months ending with the close of the month for which the salary is drawn.

While the officers responsible for deducting income-tax at the source under section 18 (2) of the Act should allow an abatement where claimed, they need not carry out a check to see whether the abatement claimed under this section exceed one-sixth of the salary of the officers concerned. This can be looked after by the Income-tax Officer to whom returns are furnished under section 21. The deducting authority should, however, see that claims for such abatements are made within the period prescribed.

It is to be particularly noted that this abatement does not apply to super-tax, section 15 being made inapplicable to super-tax by section 58.

53. Tax deducted or collected at source to be included in income.— Section 16 (2), (which provides that the amount received by a shareholder in a company by way of dividend shall be increased by the amount of income-tax payable by the company in respect of the dividend received) and section 18 (4), (which provides that where income-tax is deducted at the source from salaries and interest on securities, the tax so deducted shall, for the purposes of computing the income of an assessee, be deemed to be income received) have been inserted in order to make it clear that in the cases of taxation at the source and of the deduction of tax at the source it is the gross amount of the income (*i.e.*, including the tax deducted), which is to be taken into account in determining the rate at which an assessee shall be liable to income-tax on the rest of his income and also his income for liability to super-tax.

54. Restriction of income-tax where margin of income above a certain limit is small. (Section 17.)—Section 17 is designed to remedy the anomaly which previously existed where an assessee with an income just in excess of one of the stages in the Finance Act and therefore liable to pay income-tax at a higher rate than if his income were just below that stage, found himself, after the payment of the tax, worse off than he would have been, had his taxable income been below that stage.

Illustration.—

Income.	Tax payable if section 17 had not been passed.	Tax payable under section 17.
1,999	<i>Nil.</i>	<i>Nil.</i>
2,000	52-1	1-0
2,020	52-10	21-0
4,999	130-4	130-4
5,000	150-4	131-4

55. Deduction of the tax at source.— Section 18 of the Act provides for the deduction of tax at the source as distinguished from taxation at the source referred to in paragraph 10. It provides for the tax being deducted by the persons responsible for making payments of "salaries"

or "interest on securities" before such payments reach the hands of the recipients. The tax so deducted is paid over by the persons making the deduction to the credit of the Government of India within the period specified in rule 10 along with a statement giving the details shown in rules 11 and 12. Such deductions of income-tax are, under sub-section (5) of section 18, treated as payments of income-tax on behalf of the persons from whose income or interest the deduction was made and credit is given to them in the assessment of their income if an assessment is made of their other income. The form of return of income that has to be made under section 22 (2) prescribed in rule 19, therefore, provides for the tax previously charged upon the income being set off against any additional charge, while section 48 (3) provides as an alternative for a refund in cases where the rate deducted is greater than that applicable to the total income of the assessee.

Any person required to make a deduction under section 18 who fails to do so, may himself, under sub-section (7), be deemed to be personally in default in respect of the tax while he is also liable to be prosecuted for an offence punishable under section 51 (a).

Persons making deductions at the source are indemnified for the deduction under section 65.

The provisions of section 18 do not apply to super-tax (section 58).

The provisions of this section obviously cannot apply to cases where the payments are made outside British India as, for example, the payment of "interest on securities" in Indian States or in foreign countries or the payment of "salaries" by foreign employers to residents in British India. It is for this reason that section 19 of the Act specifies that in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax is payable by the assessee direct. This provision covers, not only cases where the employer or the person paying "interest on securities" does not reside in British India, but also cases where owing to an assessee's salary being less than Rs. 2,000, income-tax has not been deducted.

56. Deduction at source of tax on "salaries."—The Act of 1918 provided that where a payment was a non-recurring payment, the tax should be deducted at the rate appropriate to that particular sum as if it were the whole of the assessee's income, and that where a payment was a recurring payment, the tax should be deducted on the assumption that the total income of the assessee amounted to twelve times the recurring sum. As these provisions gave rise to a considerable amount of unnecessary trouble to assessees and their employers as well as to income-tax authorities, section 18 (2) of the Act now provides that deductions from salary shall be made at a rate which should approximate as closely as possible to the rate appropriate to the total assessable income of the assessee under the head "salaries," and it further empowers the person deducting income-tax from "salaries" to rectify, in subsequent deductions, mistakes made in previous deductions. Thus, if an employé's regular monthly salary is Rs. 500, the tax would be deducted by the employer at the rate appropriate to Rs. 6,000, but if such an employé received a commission or bonus or arrears of pay or officiating allowance amounting to Rs. 5,000, the employer is empowered not only to make deductions in future at the rate appropriate to an income of Rs. 11,000, but also to make up the deficiency in previous collections owing to the lower rate having been applied.

The obligation to deduct income-tax under this head now applies to all employers.

For the power of an employer to allow abatements on account of insurance premia, see paragraph 52. As regards private employers, it may be noted that it is open to them to make these allowances on account of insurance premia or not according as it may suit the convenience of themselves and their employés as, if such rebate is not given when the tax is deducted at the source, it may be claimed by the employé in the following year either as a refund or as a set-off against the amount due by him if he is assessed under section 23.

As regards the meaning of the word " salaries " see paragraph 23.

For the deduction from " salaries " of arrears of tax due see paragraph 83.

57. Deduction at source of tax on " interest on securities."—See paragraph 25. The only securities of the Government of India (other than income-tax free securities) from the interest on which income-tax is not deducted in advance are Treasury Bills.

As the person paying interest on securities has no information regarding the total income of the person to whom the payment is made, section 18 (3) provides that deductions of income-tax from " interest on securities " shall be made at the maximum rate fixed by the Finance Act. Where the total income of the person receiving the interest on securities is less than the income to which the maximum rate applies, he is entitled, under the provisions of section 48 (3), to claim a refund. In order to simplify the procedure in connection with refunds, section 18 (9) makes it obligatory upon the person deducting income-tax from the interest on securities to issue to all security-holders a certificate in the form prescribed in rule 13 specifying the amount of tax deducted from the interest and the rate at which it has been deducted. It frequently happens, however, that security-holders hand over their securities and bonds to their bankers for collection. In that event the certificate given by the person deducting the income-tax from the security would be given to a bank for a whole block of securities. In such a case the Income-tax Officer should accept a certificate from the bank in the following form, and act upon it as if it were a certificate received direct from the person deducting income-tax from the security :—

" We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of _____ and that we received payment or were credited with the proceeds thereof (less income-tax as stated on the other side) amounting to Rs. _____ "

Signature of Banker.

Address.

Date.

To be signed by the claimant.

I hereby declare that the securities on which interest as above specified has been received are my own property and were in the possession of _____ at the time when interest was deducted.

Signature.

Date.

(N.B.—The securities to be produced when required in support of any claim)."

REVERSE OF FORM.

Schedule of securities.

The number and description of securities to be entered in consecutive order.	Aggregate amount of interest.

A person who has other income liable to tax may, instead of claiming a refund, get the amount set-off against the amount due from him in the assessment made on him under section 23 by filling up the form prescribed in rule 19.

The certificate under section 18 (9) must be taken by the Income-tax Officer of the area in which the claimant or assessee is assessed or resides (see rule 39) as conclusive evidence of the payment of the tax, both where a refund is claimed in cash and where a set-off against the tax assessed on other income is claimed.

While these arrangements will facilitate the making of refunds, it is desirable that refunds should be avoided as far as possible. There are, for example, certain institutions, authorities and funds, the income of which is exempt from tax under the provisions of section 4 (3). Similarly there are persons whose assessable income is less than Rs. 2,000 and who are not, therefore, liable to tax. There are other cases where the Income-tax Officer may be satisfied that the income of a holder of securities while liable to tax is not likely to fluctuate so widely as to alter the rate appropriate to the total income. In such cases the Income-tax Officer may issue a certificate authorising the person paying the interest on securities to make no deduction of tax or to deduct tax at a lower rate than the maximum. Such a certificate might be in the following form :—

I, , Income-tax Officer of, do hereby certify that the income of , owner of the Government securities specified below, is liable to taxation at 18 pices per rupee in respect of such securities, but his income from all sources including the interest on such securities being more than Rs. and less than Rs. income-tax should be deducted on the interest at the rate of pices only per rupee.

Income-tax Officer..

Dated.

Description of security.	Number.	Date.	Amount.

Such certificates when issued should remain in force until they are cancelled and should not be required to be renewed annually.

58. *Certificate by a company to shareholders receiving dividends.* (Section 20.)—The profits of a company are charged to income-tax at the maximum rate irrespective of what the amount of the profits may be (see Finance Act), and the shareholder of a company is, under section 48 (1) of the Act, entitled to claim a refund on proof to the Income-tax Officer that the maximum rate of income-tax is greater than the rate applicable to his "total income." In order to get such a refund, he must produce the certificate required by section 20 and prescribed in rule 14. As in the case of the certificate regarding tax deducted from interest on securities mentioned in paragraph 57, where a shareholder in a company is assessed to income-tax on account of income in his own hands, he may, instead of claiming a refund, ask that any rebate to which he is entitled should be set off against the tax which he is personally liable to pay, and the form of return of income for individuals prescribed in rule 19 permits of this set-off.

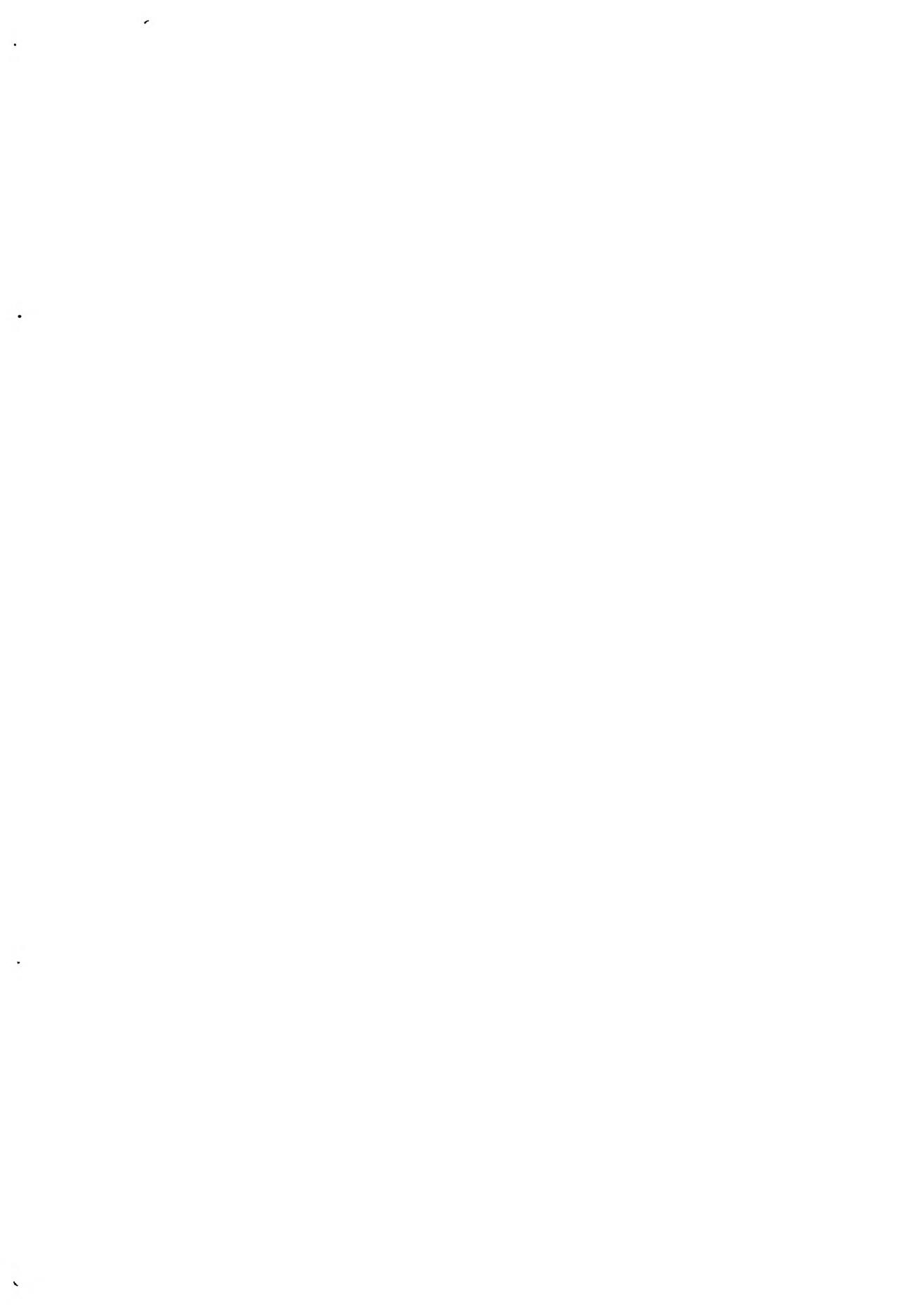
The form of the certificate prescribed in rule 14 differs from the form of the certificate prescribed in rule 13 for income-tax deducted from interest on securities in that it simply contains a statement that income-tax has been or will be duly paid by the company and that the dividend was declared on a certain date. It contains no statement as to the rate at which tax has been or will be levied or as to the amount of tax paid or to be paid. The reason for this is that in many cases it is impossible to state at what rate tax has been or will be levied on the particular profits out of which dividends are paid. The dividends of a company may be distributed from profits made during the course of a financial or commercial year before the rate of tax is known, or may be distributed from reserves maintained for the equalisation of dividends and composed of profits earned in previous years. It should, therefore, be assumed by Income-tax Officers in connection with these particular certificates that tax has been levied in respect of the dividends at the rate current on the

date on which the dividends were *declared* since this is the rate to be taken into account in dealing with a claim for a refund under section 48 (1).

The amount of income-tax so assumed to be payable by the company in respect of the dividend declared has, under the provisions of section 16 (2), to be added to the net dividend received in calculating the total income of the individual shareholder.

59. *Annual return of employés.* (Section 21.)—Under section 21 read with rules 15, 16 and 17 a return in the form prescribed in rule 17 must be made of all employés deriving an income of Rs. 1,600 per annum or over, by the Government officers mentioned in rule 15, by every private employer and by, in the case of local authorities, companies or other public bodies or associations, the "principal officer" (see paragraph 6) "or the prescribed person." The provision that in the last mentioned case the return is to be made either by the principal officer or "the prescribed person" is designed to avoid difficulties experienced particularly in the case of companies, owing to the provision of the Act of 1918 which required that the return should always be made by the "principal officer." Where a company, for example, has got several places of business, it may be more convenient for the company that the returns under this section should be made not by the principal officer at the headquarters of the company but by officers at different branches, since this particular return has as a rule to be made to the local Income-tax Officer, i.e., to the Income tax Officer of the place where the employés happen to reside. The liability for making this return remains under section 21 with the principal officer unless another person is prescribed in the case of particular companies. Such a person must be prescribed by means of a rule made by the Board of Inland Revenue [See section 2 (10) and section 59 (2) (e)]. The object of the return is to enable Income-tax Officers to see that the tax has been deducted at the source under section 18 (2), to arrange for adjustments where the collections at the source have not been made correctly and to assess "salaried" persons under section 23, whether the tax has been collected at the source or not, where the salaried persons have other income than "salary." While the obligation to deduct at the source is restricted to cases where the "salary" amounts to Rs. 2,000 per annum or over, the limit of Rs. 1,600 prescribed in rule 16 is designed to include in the return all persons who are likely to have a total income, including income from salaries, of not less than Rs. 2,000.

This section prescribes that the return must be delivered to the Income-tax Officer but does not state to what particular Income-tax Officer the return should be made. Every Income-tax Officer has, under the provisions of section 64 (4), all powers conferred by him under the Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed, irrespective of whether the particular income is assessed by him or not. In most cases it is convenient that this return should be made to the Income-tax Officer of the area in which the employés reside, but in some cases it may be more convenient that the return should be made to the Income-tax Officer of the area in which the headquarters of wide-spread business is situated. It is for the Income-tax Commis-





sioner in each doubtful case to decide to what particular Income-tax Officer this return should be sent.

The return prescribed under this section is the return of all employés who during the period of 12 months ending 31st March last were in receipt of salary of not less than the prescribed amount of Rs. 1,600, and the return must be furnished to the Income-tax Officer in the proper form before the 1st of May. The obligation to make this return is a statutory one and no preliminary notice or request from the Income-tax Officer is required. Failure to furnish this return is punishable under section 51 (c) of the Act.

60. Return of income by companies. [Section 22 (1).]—The return of the total income of a company must be furnished to the Income-tax Officer before the 15th day of June in each year in the form prescribed in rule 18, which also contains the form of the verification of such return. The obligation to make this return is a statutory obligation upon the “principal officer” (see paragraph 6) of the company, and it is not necessary that the Income-tax Officer should send any preliminary notice or request to the company or the principal officer concerned. Failure to furnish this return is punishable under section 51 (c) of the Act.

61. Return of income by persons other than companies. [Section 22 (2).]—The form of return of total income of individuals, firms or Hindu undivided families is prescribed in rule 19 which also prescribes the form of the verification of such return. In this case no statutory obligation rests upon the individual, firm or Hindu undivided family to make such a return until a notice has first been served by the Income-tax Officer requiring such a return. The notice must allow a period of 30 days for the furnishing of the return. If, however, on receipt of such notice, the return is not furnished within due time, such failure to make a return is punishable under section 51 (c) of the Act.

62. Consequences of failure to furnish a return of income.—Where a return is not furnished in due time, whether it be a statutory return which companies are required to furnish by the 15th of June under section 22 (1), or whether it be the return which other persons are required to furnish under section 22 (2) on receipt of a notice from the Income-tax Officer calling upon them to do so, the person failing to make the return is not only liable to be prosecuted under section 51 (c) but no appeal lies under the proviso to section 30 (1) of the Act against any assessment made by the Income-tax Officer upon the company or other person failing to make a return.

Failure to make a return, therefore, deprives the person at fault of any remedy whatsoever against the assessment subsequently made, except the remedy specified in section 27. Under that section a person failing to make a return may within one month after the receipt of a notice of demand of the tax apply to the Income-tax Officer, and if he satisfies him that he was prevented by sufficient cause from making the return, the Income-tax Officer may cancel the assessment and proceed with the case *de novo*. Should the Income-tax Officer refuse to re-open the case under section 27, the assessee may appeal under section 30 to the Assistant Commissioner, but if the Income-tax Officer does re-open the case, whether of his own accord on an application under section 27

or under the orders of the Assistant Commissioner under section 31 on an appeal, and the assessee fails again to make a return, the same provisions apply and no appeal lies against the assessment. Section 22 (2) makes it *obligatory* upon the Income-tax Officer to call for returns from all assessees, and as the success of the administration of the Act is largely dependant upon assessees making returns of their income, every effort should be made to get every assessee to file a return. At the same time it is desirable that, with due regard to the fiscal interests of the Government, all income-tax officials should administer the Act in a sympathetic spirit, and in particular should give assistance to assessees if they find any difficulty in filling up their returns.

Sub-section (3) of section 22 is a new provision the effect of which is that where a person has not furnished a return in due time or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return before the order of assessment is passed so that where a such return or revised return has been made the assessee may not be prosecuted for failing to submit a return in due time under section 51 (c) and may not be penalised under section 29 for making a wrong statement in the original return.

63. *Consequence of false returns.*—A person who makes a false return under section 22 is liable to be punished under the provisions of section 177 or section 182 of the Indian Penal Code which run as follows:—

" 177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. * * *."

" 182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person

shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both." for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both."

The returns under section 22 must be " verified in the prescribed manner " and under section 52 of the Act a false statement in any such verification is an offence punishable under section 177 of the Indian Penal Code.

Apart from these legal penalties, under section 28 of the Act if the Income-tax Officer, the Assistant Commissioner or the Commissioner is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income and has thereby returned it below the real amount, he may direct that the assessee shall pay a penalty not exceeding the amount of the tax which would have been avoided if the return had been accepted as correct. The second proviso to section 28 (1), however, provides that where a penal assessment under that section is imposed by the revenue authorities, no criminal prosecution for an offence shall be instituted on the same facts.

It is obviously not desirable that there should be room for a possible conflict between the revenue and judicial authorities, and it is also unreasonable that a double punishment should be provided for.

A criminal prosecution cannot, under section 53 (1) of the Act, be instituted except at the instance of an Assistant Commissioner. In most cases action under section 28 will be effective although in more serious cases a prosecution might be launched.

64. *Production of accounts.* [Section 22 (4).]—Under sub-section (4) of section 22 the Income-tax Officer is empowered to call upon any person liable to make a return to produce such accounts or documents as he may require. The production of accounts may be called for whether a return has or has not been made. As stated in paragraph 62, it is always desirable in the interests both of the assessee and of the Government that Income-tax Officers should obtain a return of income before they make an assessment. If, however, such returns are not forthcoming, they should, so far as possible, obtain the accounts of the assessee. Again, if a return is made the Income-tax Officer has power to call for accounts wherever he considers it necessary for the purpose of testing the accuracy of the return. It is, however, desirable that the least possible inconvenience should be given to assessee by the detention of their accounts by Income-tax Officers and Income-tax Commissioners should take steps to see that accounts are not detained for any undue time or for any unnecessary purpose. Where a statement of profit and loss, for example, filed by an assessee has been certified as correct and complete by an accountant approved of by the Commissioner, the Income-tax Officer should, unless he sees reason to the contrary, accept the statement as correct and complete with regard to the facts mentioned in it, although he will frequently have to call for details showing how various figures are made up.

The proviso to sub-section (4) of section 22 prevents any Income-tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the "accounting period." This limitation applies merely to books of account; it does not apply to documents. No limitation is placed by the Act upon the power of the Income-tax Officer to call for documents of any date.

Neglect to furnish accounts or documents asked for by the Income tax Officer under section 22 (4) is punishable under section 51 (d) and, further, under the provisions of sections 23 (4) read with section 30 (1), any person who fails to comply with the requisition of the Income-tax Officer for the production of accounts or documents may not appeal under section 30 against the assessment made whether he has made a return or not. He is in exactly the same position as a person who did not make a return in the first instance, his only remedy being that described in paragraph 62 (*i.e.*, under section 27).

65. *Evidence in assessment proceedings other than returns and accounts of assessee.*—In addition to his general power to call for accounts, the Income-tax Officer where he believes that a return made under section 23 (2) is incorrect or incomplete, has power to call upon an assessee to attend or to produce or cause to be produced evidence of the correctness of his return. If an assessee fails when required by an order under section 23 (2) to attend or to produce evidence in support of his return,

he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who failed originally to make a return [see section 23 (4)], that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 62.

Under section 23 (3), the Income-tax Officer is empowered to utilise any evidence bearing on the assessment which he may obtain of his own motion, while, under sections 37 and 38, he can enforce the attendance of any person for this purpose and compel the production of the information that he requires.

The following special instructions should be observed in calling for information from railway administrations:—

- (i) The information must be relevant to an individual assessment. Income-tax Officers should not, for instance, ask for a complete statement of all consignments to or from a particular station.
- (ii) The demand for information must be couched in definite terms. For instance it must state whether the particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected.
- (iii) The requisition for information should always be sent to the Agent of the Railway administration concerned.

Section 37 gives power to call for railway books.

A company should not be required to furnish the Income-tax Officer with a return of the persons (with their addresses) for the time being appearing on the share register of the company and the amounts of the dividends paid or payable to such persons during any particular period. Such a duty would be burdensome to the company with no corresponding addition to the administration. It is for this reason that in section 39 of the Act provision is made that the share register, the register of debenture holders and of mortgagees of any company are open to the inspection of the income-tax authorities, which may also take copies or cause copies to be taken of any entries in such registers. Since the power to inspect, and take copies of such registers is specifically conferred by section 39, no income-tax authorities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

The Bill as originally framed contained a provision empowering an Income-tax Officer to require information to be given regarding specific payments shown in the accounts of an assessee where there is reason to believe that such payments will become liable to tax in the hands of the recipients. This particular provision was omitted by the Select Committee on the Bill as being entirely unnecessary because Income-tax Officers have ample powers to disallow any payment shown in the accounts of an assessee where proof of the payment is not forthcoming.

Section 37 also provides for the issue of commissions.

66. *Personal attendance of assessee.*—While section 23 (2) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provisions of section 61 any person required or entitled to attend before any income-tax authority may either attend in person or be represented by a person duly authorised by him in writing.

The penalty to which an assessee who failed to attend when required to do so by an Income-tax Officer was liable under the Act of 1918, has been omitted from section 51 of the present Act. While there is no obligation on an assessee to attend in person at any stage of the assessment proceedings or before any income-tax authority in connection with any proceedings under the Act, and while he may be represented at any such proceedings by any person he pleases to authorise in writing, failure to attend or to be so represented has the result that the assessee loses any right of appeal against the assessment.

It should, however, be particularly noted that the provisions of section 66 merely refer to attendance. Returns and verifications required under the Act must be signed by the assessee himself, and section 66 does not apply to such cases.

It is desirable that tax-payers should be allowed to use whatever agency they please for the purpose of representing their case; and whatever person they authorise to represent them whether he be an employé, an accountant or any other person, has presumably been selected by them as the person having the best knowledge of their accounts and financial position, and such person is entitled to appear before any income-tax authority and to give explanations and produce evidence regarding any points of doubt that may arise.

67. Set-off of loss under one head of income against income under another head.—Under the Act of 1918 it was the aggregate amount chargeable under each of the separate heads mentioned in sections 7 to 12 of the Act that determined the total and taxable income of an assessee, so that when a person carried on a trade or profession and also had an income from house-property, if he had actually incurred a loss from the trade or profession, the figure adopted under that head in arriving at the aggregate amount of the income chargeable to tax was *nil* and not a *minus* sum. Under the provisions of section 24 of the Act a loss under one head of income may now be charged against profits under another in the same year.

The purpose of sub-section (2) of section 24 is to enable full effect to be given to the set-off in cases where it would not otherwise be given full effect to, owing to the system of taxation at the source. It provides in particular for the case where the assessee is a registered firm. A registered firm owning property or having income from a business and being in receipt of interest on securities would, under the provisions of sub-section (1), be entitled to set off a loss from the business against the income chargeable in respect of interest on securities under section 8 or property under section 9. But it might happen that a registered firm might incur a net loss, in which case it would not be liable to tax. An individual partner in such a firm, if he had income other than the income from the registered firm, would not get the same amount of relief if the firm had a net loss as he would have got, had he himself been the sole proprietor also of the securities, property or business of the firm, and sub-section (2) is intended to meet such a case.

Illustration.—A registered firm has property the annual value of which is Rs. 2,000, has income from interest on securities amounting to Rs. 1,000 and carries on a business from which it incurs in one year a loss of Rs. 10,000. The firm is entitled under the provisions of sub-section (1)

of section 24 to set off the loss from business against the annual value of the property and the interest on securities, and its total income would be *minus* Rs. 7,000. A who is a partner in the registered firm having a share of one-half in the profits thereof, has other personal income of Rs. 6,000 from interest on securities. He is entitled under the provisions of sub-section (2) to set off his share of the net loss from the firm (*viz.*, Rs. 3,500) against this personal income and would be assessed on a total income of Rs. 2,500.

Cases may occur where a person derives income as a member of two separate registered firms and has no other "personal" income, and sub-section (2) does not fully provide for such a contingency. For example, A having a half share in a registered firm, which incurred a net loss of Rs. 2,000 in one year, had in the same year no personal income liable to assessment to income-tax in his own hands, but had a similar share in another registered firm which had made a net profit of Rs. 10,000. He would not get the benefit of sub-section (2), since the profits or gains of the second registered firm are not profits or gains "in respect of which the tax is payable by him," as the income-tax is payable under the Act by the registered firm itself in respect of its profits. Neither could he get any advantage from sub-section (1) since receipts from registered firms are not included among the "heads mentioned in section 6." Under the Act as it stands, he could only, under the provisions of section 48 (2), obtain a refund on his share of the profits of the second registered firm at a rate equivalent to the difference between the maximum rate and the rate applicable to his total income, *i.e.*, according to the rates in force in 1922-23 he would get a refund of -1/1 in the rupee on his share (Rs. 5,000) of the profits of the second registered firm which had been taxed at source at the maximum rate of -1/6 and he would suffer tax finally at the rate of 5 pies on the Rs. 5,000. But in equity he should only suffer tax at 5 pies in the rupee on his real income of Rs. 5,000 *minus* Rs. 1,000 *i.e.*, Rs. 4,000. Although such cases will be rare and are not provided for in the Act, they should be dealt with on the basis of real income, *i.e.*, in the case above quoted A should get a refund so adjusted that he shall suffer finally tax of 5 pies in the rupee on Rs. 4,000.

68. *New businesses.*—As stated in paragraph 13, assessments under the Act are made on the profits of the "previous year." When a new business is started, therefore, no assessment will, as a rule, be made in the first year, and the assessment in the second year will be made on the profits of the preceding year. The only exception is that referred to in the next paragraph.

69. *Businesses closing down.*—The only exception to the general rule that assessments are made on the profits of the previous year is contained in section 25 (1) where, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses, professions or vocations that close down during the course of a financial or commercial year, it is provided that in such cases in addition to the assessment on the income of the preceding year a further assessment may be made in the year in which a business, profession or vocation is closed down, on the income of that year. Sub-section (2) of that section imposes a statutory obligation on persons discontinuing a business, profession or

vocation to give notice of such discontinuance within 15 days of the discontinuance.

It is to be noted that these provisions apply only to businesses, professions or vocations, that is to say, to profits or gains taxable under sections 10 and 11, and further, that they only apply to any business, profession or vocation commenced after the 31st March 1922. They do not apply to any business, profession or vocation which was in existence before that date, as these are subject to the special provisions of section 25 (3) which are described below.

The power to make this additional assessment under section 25 (1) is a *discretionary* power which may be exercised whether the business, etc., is a purely temporary business commencing and closing down in the same year, or whether it is a business that has been in existence and has been previously taxed under the present Act. It should only be used in cases where there is reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business, etc., closes down. Where there is a reason to believe that there will be no difficulty in making the assessment and collecting the tax in the usual manner, that is, in the year after the business closes down and on the profits of the year in which it did close down, there is no need to use the special powers conferred by this sub-section.

The profits to be taxed under the provisions of section 25 (1) are the profits accruing between the end of the last "previous year" of which the profits have been taxed and the date of the discontinuance of the business. Further, the rate to be applied in taxing the discontinued business under sub-section (1) is the rate in force in the year in which the assessment is made.

Where a business, profession or vocation had tax charged on it under the provisions of the Act of 1918, it cannot be taxed in the year in which it closes down under the provisions of sub-section (1) of section 25. On the contrary, for reasons given in paragraph 13, it is, under the provisions of section 25 (3), not liable to tax in respect of profits or gains of the period between the end of the last "previous year" and the date of the discontinuance, but is entitled to substitute the profits of that period for the profits of the last "previous year" and claim an adjustment accordingly. This special provision applies only to a business, profession or vocation on which tax was charged under the Act of 1918, and when a claim for this concession is made, it must be supported by proof that tax had been charged under the Act of 1918 in respect of that very business; profession or vocation.

N. B.—The provisions of section 25 apply to the complete stoppage or discontinuance of a business, profession or vocation and do not apply to any change in the proprietorship. Where there is any change in the proprietorship merely, the provisions of section 26 apply (see paragraph 70).

Where a business, profession or vocation is completely discontinued and is not merely transferred from one proprietor or set of proprietors to another, the person who carried on the discontinued business is responsible for the payment of the tax, and where the proprietorship was vested in a firm, section 44 specifically provides that the persons who-

were members of the firm on the date of such discontinuance, are jointly and severally liable to any tax due from the firm.

70. Change in the ownership of a business, profession or vocation.—Difficulties were experienced under the previous Acts regarding the distribution of the tax in cases where there has been a change in the proprietorship of a business, profession or vocation. Under the provisions of section 26 the liability for the tax based on the income of the "previous year" attaches in such cases to the business, profession or vocation itself, and the new owners are liable for the tax even though they were not owners for the whole of the time during which the profits on which the assessment is based, were earned. This applies whether the business, profession or vocation is owned by a single individual or by partners or by a company, (the word "person" includes a company under the provisions of section 3 (39) of the General Clauses Act.) If an individual therefore has succeeded by purchase or otherwise to another individual in the ownership of a business, etc., he is, under the provisions of this section, deemed both for the purposes of income-tax and super-tax to have received the profits on which the assessment is based. The same remarks apply to cases where a company buys up another company or purchases a concern from a firm or an individual or where there is a change in the constitution of a firm. For example, if A happens to be a member of a firm when an assessment is made in the year 1922-23, even if A has newly succeeded to the partnership just before the assessment is made, he is deemed both for the purposes of income-tax and super-tax to have received out of the profits of the year 1921-22 (which are the profits assessable in the year 1922-23) the share to which he would have been entitled had his share in the registered firm been the same as it was in 1922-23 when the assessment was made.

71. Orders of assessment.—When an assessment order has been passed under section 23, any assessee who applies to the Income-tax Officer for a copy of the order must be supplied by the Income-tax Officer with a copy free of charge.

72. Notice of demand.—The notice of demand referred to in section 29 and prescribed in rule 20 draws a clear distinction between the cases where an appeal lies against an assessment and where an appeal does not lie, and shows the appropriate remedy to an aggrieved assessee in either case. These notices of demand should, so far as possible, contain the demand both on account of income-tax and super-tax, and since the total income has to be ascertained in every assessment for income-tax in order to determine the rate at which income-tax shall be payable on any income for which the assessee is responsible for direct payment, and as it is on the same total income that super-tax is leviable, it is desirable that, so far as possible, in the interests of economy and convenience to assessees, the assessment both of income-tax and super-tax should be made simultaneously.

73. Appeals to Assistant Commissioner.—The cases in which an appeal may lie to an Assistant Commissioner against the orders of an Income-tax Officer are specified in detail in section 30. As stated in paragraph 62, it is necessary that every effort should be made to get taxpayers to file returns of income and the restrictions on appeals contained in the proviso to section 30 (1), which definitely forbid the entertainment of any

appeal against an assessment where the Income-tax Officer has been compelled to make the assessment under section 23 (4), [i.e., in cases where an assessee has failed to make a return or has failed to produce his accounts when called for or has failed to produce any proof of the accuracy of his returns] should be rigidly adhered to. Under no circumstances may any appeal be entertained in those cases.

Section 30 now allows appeals to the Assistant Commissioner against the refusal of an Income-tax Officer to re-open a case under section 27 and also against the orders of an Income-tax Officer imposing a penalty under section 25 (2) or section 28.

The form in which an appeal must be presented to the Assistant Commissioner is specified in rule 21 and that form must also be verified in the method prescribed in the same rule. Any false statement in the said verification is punishable under section 52.

74. Powers of Assistant Commissioner in dealing with appeals. (Section 31.)—The provisions of this section have been re-worded in order to make it clear that the Assistant Commissioner in entertaining an appeal has power to remand a case to the Income-tax Officer for report or disposal on its merits and also that the Assistant Commissioner is not required to pass orders on the actual date of hearing, but may pass orders after the last day of hearing.

An Assistant Commissioner in dealing with an appeal may enhance the assessment made by the Income-tax Officer but under the proviso to sub-section (3) he must first give the appellant a reasonable opportunity of showing cause against the enhancement. The appellant in such a case may, under section 32, appeal to the Commissioner against the order of enhancement.

75. Appeals to Commissioner.—No second appeal lies from orders passed by an Income-tax Officer. One appeal is allowed to the Assistant Commissioner under section 31. The only cases in which an appeal may be made to the Commissioner are against special orders passed by an Assistant Commissioner himself, viz., an order imposing a penalty under section 28 or an order enhancing an assessment in the course of an appeal. No appeal lies to the Commissioner in any other case.

76. Power of review.—Under section 33 the Commissioner has power to review any proceedings whatsoever taken by subordinate officers. Under the Act of 1918 his powers were limited to assessment proceedings but he may now review any proceedings including orders imposing penalties and orders in connection with refunds or recovery of demands.

The Commissioner in exercise of his powers of review need not necessarily in each case make a personal enquiry but may cause an enquiry to be made by a subordinate officer.

77. Assessment of income which has escaped assessment in previous years.—Under the provisions of section 34 where income chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may commence proceedings at any time within one year from the end of the year in which the income so escaped assessment in order to get a full or proper assessment. All that section 34 requires the Income-tax Officers to do within the statutory period of one year is to commence proceedings for assessment. It is not

necessary that the proceedings should be completed within that period.

When income that escaped assessment or was assessed at too low a rate is subsequently assessed or fully assessed, the proviso to section 34 makes it clear that the rate applicable to such assessment or re-assessment is the rate in force at the time when the income should originally have been so assessed.

78. *Rectification of mistakes in assessments.*—The power conferred upon an Income-tax Officer by section 35 to rectify a mistake, whether on his own motion or on the application of an assessee, is confined to the rectification of mistakes patent from the facts or documents which were before the Income-tax Officer when he passed the original assessment order. This section does not confer on the Income-tax Officer a general power of review or authorise any assessee to introduce any new facts in connection with the said assessment.

79. *Elimination of pies from assessment.*—Section 36 provides that in income-tax assessments or refunds fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna. This provision has been made for the purpose of eliminating fractions of an anna from the accounts.

Income-tax Officers should also be instructed not to attempt to work out the Income-tax due on fractions of a rupee. Fractions of a rupee in income should be entirely disregarded.

80. *Fiduciaries.*—In the case of trusts the Act does not permit of any double taxation, *viz.*, once in the hands of a trustee and once in the hands of a beneficiary. Sections 40 and 41 of the Act which provide for the trustee in particular cases being liable for the tax in place of the beneficiary make it perfectly clear that it is only in cases covered by these sections that a trustee can be required to pay the tax.

81. *Non-residents. Income other than from business.*—Under section 4 (1) tax is payable in respect of all income, profits or gains accruing or arising in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India, whether the recipient resides in British India or not. There is little difficulty regarding income arising in British India and receivable by non-residents under the heads "salaries," "interest on securities," "property," "professional earnings," or "other sources." In cases of income from "interest on securities" and "salaries" income-tax is deducted at the source, and in the case of income under the other heads a non-resident is usually represented by an agent [section 42 (1)]. No difficulty has been experienced in determining whether income under any of those heads is taxable.

82. *Non-residents. Income arising from business in India.*—There is no precise definition in the Act which can be used as a test for determining in every particular instance whether a non-resident is or is not carrying on business in British India and how the amount of taxable profits is to be arrived at. Section 42 of the Act contains special provisions regarding non-residents, and rules 33 to 35 prescribe the manner in which and the procedure by which the income, profits and gains may

be arrived at in the case of non-residents. Instances are given below of the method to be adopted in dealing with typical cases:

(1) *Indian branches of non-resident firms* are liable to assessment under the Act. In order to secure an accurate assessment in such cases, sections 22 (4) and 37 enable an Income-tax Officer to require the production of the balance sheet and profit and loss account of the firm as a whole in addition to that of the Indian branch, and also to require the submission of a detailed statement of all the profits credited to the personal account of the head office on account of transactions carried out on its behalf. In some instances, however, the form adopted for the accounts and balance sheets of the head office or the Indian branch does not enable the share of profits properly due to the Indian branch to be accurately gauged, while there are certain firms which keep no accounts at all either at their head office abroad or at their branch offices in India. Rule 33 gives Income-tax Officers wide powers to determine how the profits of the Indian branch shall in these circumstances be calculated and enables them to fix as the income of the Indian branch for assessment purposes either a percentage of the turnover of the business done by the branch or, where this procedure proves unsuitable, an amount which bears the same proportion to the total profits of the business as the Indian receipts bear to the total receipts of the business, or, where neither of the above methods proves suitable, any other more reliable method of calculation. In the case of shipping companies in particular the most suitable method of assessing the Indian branch is usually to calculate tax on the same proportion of the total profits of the company as the Indian receipts of the company (meaning thereby the sums received either in India or elsewhere on account of goods shipped or passengers carried from India) bear to its total receipts. In the special case of the Indian branches of non-resident insurance companies (life, marine, fire, accident, burglary, fidelity guarantee, etc.), it will probably be found both feasible and equitable to adopt the provisions of rule 35 and assess these branches on the proportion of the total profits of the companies corresponding to the proportion which their Indian premium income bears to their total premium income.

(2) *Indian firms allied to non-resident firms of which they are not technically either branches or agencies* often succeeded in the past in escaping their proper taxation by a manipulation of accounts with the parent non-resident companies. To cite an example, a foreign firm dealing in aniline dyes was registered as a separate limited liability company in India with a capital of Rs. 20,000. The shares were never placed on the market in India, but, with the exception of small holdings by managers in India, were all held abroad. The registered capital was nominal in comparison with the value of the stock-in-trade and the parent company abroad sold to the subsidiary Indian company at a price leaving a margin just sufficient to cover the expenses of the subsidiary company, or causing an actual loss to be shown. Section 42 (2) of the Act is designed to prevent a subsidiary Indian firm or company from benefiting by such a manipulation, and enables an Income-tax Officer to assess it on the profits which may reasonably be deemed to have been derived from its Indian business, while, where any difficulty is experienced in arriving at a basis for assessment, assessment on a percentage

of turnover, or other suitable method can be adopted under rule 34. It is to be noted that the provisions of section 42 (2) are not applicable where the parent non-resident firm or company is constituted within the British Empire and that the liability to assessment is placed on the subsidiary Indian firm as a principal and not as an agent.

(3) *Indian agents of non-resident firms of which they are not technically either branches or subsidiary firms* are liable for the payment, on account of their principals, of the tax on their principals' Indian profits under the provisions of sections 42 (1) and 43 of the Act. It will be observed that these provisions permit the levy of the tax on a non-resident's business not only where he has established a regular *agency* in India but also where he conducts his business regularly through a particular *agent* or casually through various *agents*. In this case it is not necessary that anything of the nature of a regular *agency* should exist in order to make the profits of a non-resident chargeable in the name of an agent. They are so chargeable even when the only connection between the non-resident and the person acting as his agent is that that person is ordinarily and regularly employed as an agent by the non-resident. The Government of India do not, however, desire that in practice the liability to assessment should be enforced except where something definitely of the nature of an agency exists and in particular no attempt should be made to tax the profits of a *consignment business pure and simple*, merely because the non-resident consignor habitually uses a particular resident as his agent.

In all cases it will be a question of fact whether the connection between the non-resident and the resident is such that an agency can be held to exist. It is doubtful whether it is practicable to formulate for the guidance of Income-tax Officers any more definite principles than those stated above; but the following examples may serve to indicate the lines on which decisions should be reached:—

- (a) B, a distiller in Glasgow, has agreed to sell to no one in India except A, his agent, provided that A gives B all or an agreed proportion of his trade. A purchases from B and sells to the trade at his own rates, and all bad debts are A's. No attempt should be made to tax B on his profits. His position, in spite of his supplementary agreement with A, is merely that of a seller to an Indian consignee who takes the risks or profits of the trade in India.
- (b) A, an Indian resident and a large supplier of mill stores, has a monopoly for the sale in India of the belting of a non-resident B. A is paid commission by B on all orders he sends either for his own stock or risk or in execution of orders obtained. He does not confine his purchases of belting to B. He stands all loss from bad debts and fixes the prices to be asked for the goods. Here again the position of B is merely that of a seller to an Indian consignee, and no attempt should be made to tax B's profits.
- (c) A is the Indian agent for hardware and sundries of B, a British manufacturer. A receives salary and commission from B and bad debts fall on B. Here there is a regular agency and B's Indian profits should be taxed through A.



(d) A is the Indian agent for B, a firm in an Indian State, who consigns goods for sale in Bombay or China through 'A'. The business is purely a consignment business and B's profits on his Indian trade should not be taxed.

In all these cases A's remuneration or profits as agent are liable to the tax.

(4) *Casual agents for non-resident firms to whom goods are from time consigned* have been dealt with in (3) above and no attempt should be made to tax the profits of a non-resident through the agent on this class of business.

Attention is invited to the ruling of the Madras High Court (Case No. 5) in which it has been held that a person who is not a resident in British India but to whom income arises or accrues through business connections in British India is assessable to income-tax under sections 4 and 42 (1) of the Act whether he is a British subject or a foreigner and that the provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent. The non-resident can himself be assessed under section 42 (1) if he happens to come into British India. All that the latter part of the sub-section does is to provide machinery by which the tax can be levied when the non-resident himself cannot be got at.

See also paragraph 83 as to the time within which arrears of tax due from a non-resident may be recovered.

83. *Method of the recovery of the tax.*—The Income-tax Officer is responsible for the recovery of the tax whether the demand represents the tax assessed by himself under section 23 or whether it represents an enhancement made by the Assistant Commissioner on appeal under section 31 or by the Commissioner in exercise of his powers of review under section 33. Notices of demand under section 29 in the form prescribed in rule 20 should be issued at as early a date as possible after the assessment is made under section 23 or when intimation is received of orders of enhancement from superior authorities in order that the tax may be promptly collected. The fact that an appeal has been lodged against an assessment should not stop the collection although the Income-tax Officer is empowered, under section 45, in his discretion to treat an assessee as not being in default until an appeal is disposed of. When the Income-tax Officer considers that an appeal is a *bonâ fide* appeal, he should in exercise of his discretion under section 45 require the assessee to pay the portion of the tax that is not in dispute and should, under no circumstances, delay the collection of that portion of the tax which is not disputed in the appeal. Similarly section 66 (7) of the Act provides that a reference to the High Court shall in no way stop the collection of the tax.

When the tax is not paid within the time prescribed in the notice, or, if no such time is prescribed, by the first day of the second month following the date of the *service* of the notice or order, the Income-tax Officer should use the powers conferred upon him by section 46 (1) and impose a penalty for the default.

Section 46 (3) and (4) provides for cases where a special whole-time income-tax staff for the actual collection of the tax is employed in any area. Where such a staff is employed, the Commissioner of Income-tax may confer upon that staff any of the powers for the enforcement of any process for the recovery of a municipal tax or local rate imposed under any enactment which is in force in any part of the province, e.g., the powers of distress. In other areas and, in the areas in which a special staff is employed where the powers for the recovery of municipal taxes or local rates have proved insufficient, the Income-tax Officer may, under section 46 (2), forward under his signature a certificate specifying the amount of arrears due from an assessee to the Collector of the district, and the Collector of the district on receipt of such a certificate must proceed to recover the amount specified in the certificate as if it were an arrear of land revenue.

Where the defaulter is a salaried person the Income-tax Officer may, under the provisions of section 46 (5), require the person paying "salary" to such assessee to deduct from any subsequent payments of "salary" any arrears of tax due from such assessee whether those arrears are due on account of tax on 'salary' or on income from any other sources or on account of any penalty.

The necessity for prompt collection of the tax should be impressed upon Income-tax Officers since not only is delay in the collection of this tax likely to result in loss of revenue for other reasons, but, under the provisions of section 46 (7), no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made, with the exception of the special case referred to in sub-section (1) of section 42. That sub-section refers specially to arrears of tax due from a non-resident. For the collection of such arrears no time limit is prescribed as such arrears may be recovered from any assets of the non-resident which may *at any time* come within British India.

The above remarks regarding recovery of tax apply also, under the provisions of section 47, to the recovery of any penalty imposed under section 25 (2), section 28 or section 46 (1).

84. Refunds of Income-tax. (Section 48.)—Refunds are necessitated owing to the system of taxation at the source, which occurs in the case of the tax on companies and on registered firms (section 48 (1) and (2)), and of deduction at the source, which occurs in the case of "interest on securities" and "salaries" (section 48 (3)). In both these cases the rate of tax appropriate to the "total income" of the recipient (the shareholder, partner, security-holder or salaried person) is not known at the time that the tax is assessed or deducted. As stated in paragraph 51, in order to simplify the procedure in connection with refunds section 18 (9) makes it obligatory upon the person deducting income-tax from "interest on securities" to issue to all security-holders a certificate specifying the amount of the tax deducted from the interest and the rate at which it has been deducted; and similarly section 20 (see paragraph 58) requires the principal officer of a company distributing dividends to issue to shareholders a certificate stating that the company has paid or will pay income-tax on the profits that are being distributed. These certificates (or in the



case mentioned in paragraph 57, a certificate by a bank) must be accepted by Income-tax Officers as conclusive proof that tax has been paid.

For the reasons given in paragraph 58 the Income-tax Officer for purposes of refund in the case of dividends, has to assume that the dividends mentioned in the certificate were taxed at the maximum rate current on the date when the dividends were *declared*. In the case both of dividends and of interest on securities, the tax deducted has to be added to the "net" dividend or interest paid for the purpose of calculating both the "total income" of the applicant and the amount of refund due [see paragraph 53, and section 48 (1)].

Applications for refund under the provisions of rule 39 can now be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or, where he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which he ordinarily resides and such Income-tax Officers are required to give the refunds. The applications need no longer be made, as under previous rules, to the Income-tax Officer of the area in which the income-tax was paid.

The necessity for refunds of tax on Government securities can be avoided, by the procedure laid down in paragraph 19, in the case of persons who are either not liable to the tax or who have a taxable income which is sufficiently stable to justify the Income-tax Officer in assuming that the rate applicable to the total income is not likely to move from one grade to another. Again, as has been pointed out in preceding paragraphs, the necessity for a refund can also be avoided in the case of persons who have income which has not been taxed, or from which income-tax has not been deducted, at the source, since such persons can claim a set-off against the tax due on that other income.

In cases where a cash refund is necessary, the procedure laid down in rules 36 to 40 should facilitate the granting of refunds. The application must be made in the form prescribed in rule 36 and verified in the manner laid down in that rule and must, under rule 37, be accompanied by a return of the "total income" in the form prescribed in rule 19 unless such a return has previously been made. A false statement in such a return or in such a verification is punishable under the provisions of section 182 of the Indian Penal Code, which are set out in paragraph 63 above. The application must also, where necessary, be accompanied by the certificates mentioned in section 18 (9) or section 20. The applications, under rule 40, need not be presented in person, but may be sent by post or by an authorised agent. In cases where the applicants do not present themselves, the amount of any refund due should be remitted by money order, in which event the cost of the money order is borne by the Government and is not to be deducted from the amount to be refunded.

It should be particularly noted that section 48 does not apply to super-tax (see section 58) since super-tax is not deducted at the source or taxed at the source with the solitary exception of the case referred to in section 57, in which case no claim for any refund can arise.

Any claim to a refund must, under the provisions of section 50 be made within one year from the last day of the year in which the tax was recovered. No claim can be entertained if presented at a later date.

85. *Relief from double income-tax.* (Section 49).—At a conference between the representatives of the Home Government and of the Dominions

and of India an agreement was arrived at to the following effect: That in respect of income taxed both in the United Kingdom and in India there should be deducted from the appropriate rate of the United Kingdom income-tax (including super-tax), the whole of the rate of the Indian income-tax (including super-tax), charged in respect of the same income, subject to the limitation that in no case should the maximum rate of relief given by the United Kingdom exceed one-half of the rate of the United Kingdom income-tax (including super-tax) to which the individual tax-payer might be liable and that any further relief necessary in order to confer on the tax-payer relief amounting to the lower of the two taxes (United Kingdom and Indian) should be given by India. That is to say, the arrangement is that where income is liable to taxation both in the United Kingdom and in India, it should pay only at the highest rate leviable in either country. These proposals have been accepted by the Government of the United Kingdom and are embodied in section 27 of the Finance Act of 1920. A copy of that section is given below:

* * * * *

27. (1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income-tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income-tax paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

- (a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom tax, the rate at which relief is to be given shall be the Dominion rate of tax;
- (b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of the United Kingdom tax.

For the purpose of this section, the expression "the appropriate rate of United Kingdom tax" means the rate at which the claimant for the year to which the claim relates has borne or is liable to bear United Kingdom income-tax and where the claimant is liable to United Kingdom super-tax the expression "the appropriate rate of United Kingdom tax" means a rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom income-tax and super-tax, respectively, for that year.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income-tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any relief to which he may be entitled under the provisions of this part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income as may be necessary to secure that the amount of United Kingdom income-tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of Schedule D or in any other provision of the Income-tax Acts, no deduction shall be made on account of the payment of Dominion income-tax in estimating income for the purposes of United Kingdom income-tax, and where income-tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income-tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income-tax shall be deemed to be income arising or received after deduction of Dominion income-tax and an addition shall, in estimating income for the purposes of the United Kingdom income-tax, be made to that income of the proportionate part of the income-tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount





of any Dominion income-tax directly charged or chargeable in the Dominion in respect of that income;

Provided that—

- (a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Special Commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this sub-section, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI of Schedule D; and
- (b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, then in assessing or charging income-tax in the United Kingdom in respect of income assessed or charged to income-tax in that Dominion deduction shall be allowed in estimating income for the purpose of United Kingdom income-tax of an amount equal to the difference between the amount of the Dominion income-tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom income-tax in respect of the Dominion income-tax for the period on the income of which the assessment or charge to United Kingdom income-tax is computed.

In this sub-section the expression "dividends" includes any interest, annuities, dividends, shares of annuities, pensions, or other annual payments or sums in respect of which tax is charged under the Rules applicable to Schedule C or under Rule VII of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D, and E, a body of persons is entitled to deduct income-tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income-tax.

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, the obligation as to secrecy imposed by the Income-tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases when relief is claimed both from United Kingdom income-tax and from Dominion income-tax.

(7) The Commissioners of Inland Revenue may from time to time make regulations generally for carrying out the provisions of this section, and may, in particular, by those regulations provide :—

- (a) For making such arrangements with the Government of any Dominion to which the last preceding sub-section applies as may be necessary to enable the appropriate relief to be granted.
- (b) For prescribing the year which in relation to any Dominion income-tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income-tax.

(8) In this section :—

- (a) The expression "Dominion" means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions :
- (b) The expressions "United Kingdom income-tax" and "United Kingdom super-tax" mean respectively income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts :
- (c) The expression "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom income-tax or super-tax :
- (d) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income-tax paid for the year by the amount of the income in respect of which the Dominion income-tax is charged for that year, except that where the Dominion income-tax is charged on an amount

other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the Special Commissioners.

For the purposes of this section, the rate of United Kingdom income-tax shall be ascertained by dividing by the amount of the taxable income of the person concerned the amount of tax payable by that person on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of this section, and the rate of United Kingdom super-tax shall be ascertained by dividing the amount of the super-tax payable by any person by the amount of that person's total income from all sources as estimated for super-tax purposes."

* * * * *

Under that section a person whose income is assessed both in the United Kingdom and in India is entitled to claim from the authorities of the United Kingdom a refund or rebate of the rate levied in India up to one-half of the English rate.

Section 49 of the Indian Income-tax Act, therefore, provides that where any further relief is to be given in order to secure that such a person shall not pay a higher rate than the highest rate in either country, such relief will be given by India, subject to the limitation that the relief given in India shall not exceed half of the rate of income-tax and super-tax combined. Up to the year 1921-22 the Indian rates of income-tax and super-tax combined were less than half the rates in the United Kingdom, and, therefore, no claim can be made under this section in respect of tax levied up to that year. Relief can only be claimed in India, when owing to any alteration in the rates, the Indian rate is more than half the English rate, and the amount of relief would merely be the amount by which the Indian rate exceeds half the English rate. The rates prescribed in India for the year 1922-23, in some cases now amount to more than half the English rates as fixed for the year 1921-22. The table below shows the amount of English income-tax and super-tax and the effective rate per rupee contrasted with similar figures for the Indian rates for those years.

ENGLISH.				INDIAN.			
Income.	Income-tax.	Super-tax.	Effective rate per rupee.	Income-tax.	Super-tax.	Effective rate per rupee.	
Rs.	Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.	
30,000	7,875	—	0 4 2 ² ₅	2,343	—	0 1 6	
45,000	13,500	1,312	0 5 1 ⁵ ₆	4,218	—	0 1 6	
60,000	18,000	3,187	0 5 7 ⁴ ₅	5,625	625	0 1 8	
75,000	22,500	5,437	0 5 11 ¹ ₂	7,031	1,562	0 1 10	
90,000	27,000	8,062	0 6 2 ⁵ ₆	8,437	2,500	0 1 11 ¹ ₂	
105,000	31,500	11,062	0 6 5 1 ¹ ₂	9,814	3,594	0 2 7	
120,000	36,000	14,437	0 6 8 ⁷ ₁₀	11,250	5,000	0 2 2	
135,000	40,500	18,187	0 6 11 ¹ ₂	12,656	6,406	0 2 3 ¹ ₂	
150,000	45,000	21,937	0 7 1 ² ₅	14,062	7,812	0 2 4	
225,000	67,500	40,687	0 7 8 ⁸ ₂₅	21,094	17,949	0 2 9 ¹ ₂	
300,000	90,000	59,437	0 7 11 ² ₅	28,125	31,250	0 3 2	
450,000	135,000	100,687	0 8 4 ¹ ₂	42,187	68,750	0 3 11 ¹ ₂	
600,000	180,000	145,687	0 8 8 ³ ₅	56,250	1,20,312	0 4 8 ¹ ₂	
Companies	—	—	0 4 9 ¹ ₂	—	—	0 2 6	

It will be observed that the rate for individuals and firms is less than half the English rate upto an income of $4\frac{1}{2}$ lakhs. Persons with such incomes can, therefore, claim a refund or rebate of the whole of the Indian rate to be set against the English rate from the authorities in England. The English rate for an income of 6 lakhs is 8 annas and $8\frac{1}{5}$ pies, and a person who has paid income-tax both in the United Kingdom and in India on an income of 6 lakhs could claim a refund from the English authorities of a sum equivalent to 4 annas and $4\frac{1}{10}$ pies per rupee on his assessed income and thereafter could claim from the Indian Income-tax authorities a refund of $4\frac{2}{5}$ pies per rupee of his assessed income. It is to be particularly observed that the comparison is of *rate* of tax with rate of tax, and not of the comparative *amounts* of tax paid in either country. Further an assessee must first get his relief from the authorities in the United Kingdom and only then can he claim a refund of the balance from the Indian Income-tax authorities. He cannot claim a rebate in India during an assessment and he must produce proof that he has obtained relief from the English authorities and of the amount of that relief.

It will also be noted in the above table that the amount of relief which a company can get under the English Act is at the rate of 2 annas and $4\frac{4}{5}$ pies in the rupee, and that the amount that it can claim from the Indian authorities would be at a rate of $1\frac{1}{5}$ pies per rupee. The reason for the comparative high rates in India as compared with the United Kingdom of the tax on companies is that the Indian rate includes the super-tax on companies while the English rate does not include the United Kingdom Corporation tax. At the same time it must be noted that the Indian rate of 2 annas and 6 pies given in the above table for companies is a rate which is actual practice would never be reached. It includes the 1 anna and 6 pies income-tax rate and the flat rate of 1 anna for super-tax; but the flat rate of 1 anna is never charged on the whole of the assessable income, but only on the portion of the income in excess of Rs. 50,000. Thus in the case of a company with a profit of 1 lakh, the effective rate would merely be 2 annas and the effective rate in the case of a company with a profit of 2 lakhs would only be 2 annas and 3 pies. In both these cases full relief would be obtainable in the United Kingdom and no relief could be claimed in India.

This section merely provides for relief from double taxation where the same income is assessed to income-tax both in the United Kingdom and in India. It does not provide for relief in other cases.

86. *Prosecution for offences.* (See also paragraph 63.) Prosecution of assessees for offences under sections 51 and 52 cannot be commenced except at the instance of an Assistant Commissioner and the Assistant Commissioner is, under section 53, empowered to stay any such proceedings or compound any such offence. The power of compounding an offence is one that can be exercised not only after proceedings have been commenced, but before proceedings are instituted at all.

87. *Income-tax records to be kept confidential.* (Section 54.)—While the Act of 1918 merely penalised the disclosure by a public servant of the particulars contained in any statement or return furnished under the Act, section 54 further penalises the disclosure of any particulars contained in any accounts or documents produced under the Act or in any evidence

given or deposition made in the course of proceedings under the Act or in any record of an assessment proceeding or proceedings for recovery of a demand, and debars the Courts from requiring public servants to produce income-tax records or to give evidence respecting the same.

The proviso to sub-section (2) contains provisions stating in what particular cases information may be disclosed. The effect of the provisions is that information obtained in connection with the assessment of incomes and recovery of the tax may be disclosed by public servants to such persons only as act in the execution of the Act and where it may be necessary to disclose the same to them for the purposes of the Act, or in order to, or in the course of, a prosecution for perjury committed in connection with proceedings under the Act. Proviso (c) was inserted mainly for the purpose of extending the protection to every action of a public servant in pursuance of the provisions of the Act or the rules such as the service of a notice by affixture. Apart from these particular cases it is essential that all records should be kept strictly confidential, and, in particular, the practice in certain provinces of furnishing information to local authorities, who impose a tax on "circumstances and property" or a local income-tax, of the details of assessment made by the income-tax authorities must cease.

For the meaning of the phrase "public servant" see paragraph 8.

88. *Super-tax*.—The provisions of the Act regarding income-tax other than those specially excepted in section 58 apply also to super-tax which is merely, as stated in section 55, "an additional duty of income-tax." Super-tax is levied at the rates specified in the Finance Act (see last page of Part I of this Manual).

The super-tax on companies is levied at a flat rate on the whole of the profits of a company. This tax on companies, which takes the place of the tax formerly levied at a graded scale of rates on the "undistributed profits" of a company, is levied on the company as such on account of the special privileges which companies enjoy by statute in the shape of corporate finance and limited liability. No refund on account of super-tax on companies is, therefore, allowed to shareholders.

Apart from the tax on companies which stands in a class by itself, super-tax is levied on a scale of graduated rates. While in the case of income-tax the different rates are applied to the *whole* of an assessee's income, the different rates of super-tax are levied on successive "slices" of income, *i.e.*, on the portions of an assessee's income in excess of certain limits or the portions lying between certain limits.

Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assessees.

Unregistered firms are also treated as separate assessees. Where, however, an unregistered firm itself is not assessed to income-tax, (*e.g.*, if its assessable profits are less than Rs. 50,000), in that case only is the income which any individual member of an unregistered firm receives from the firm included in his total income.

Registered firms are not assessed to super-tax, but the shares of partners in registered firms are included in the total income of the individual partners on which super-tax is levied and similarly the dividends of shareholders received from companies are included in the individual income of those shareholders.

The tax is levied on "total income" and "total income" in all cases means exactly the same thing as total income calculated for income-tax purposes with the solitary exception that where an unregistered firm is itself assessed to income-tax, the share of the profits of a member of the unregistered firm is excluded from his total income for super-tax purposes.

89. Deduction of super-tax at the source.—The one exception to the general rule that super-tax is not deducted at the source is that provided for in section 57. That provision is rendered necessary owing to the difficulty of obtaining super-tax from non-residents. Section 57 (1) provides that in order to recover super-tax from the share of the profits of a partner in a registered firm, who is not resident in British India, the resident partners are themselves jointly and severally liable to pay the super-tax due from the non-resident in respect of his share, and sub-section (2) similarly makes the principal officer of a company liable to deduct any super-tax due on dividends payable to a shareholder who, to his knowledge, is not resident in British India. The liability merely attaches in cases where the amount of the profits or dividends payable to the non-resident partner or shareholder is, taken by itself, liable to super-tax on the assumption that it represents the whole income of the non-resident partner or shareholder. The Act does not require the resident partner or the principal officer to obtain from the non-resident partner or shareholder a statement of any other income that may accrue to him in British India. Where there is reason to believe that there is such other income it will be necessary to rely on the provisions of sections 42 and 43 of the Act. In the case of companies the obligation to deduct applies only to dividends, and does not apply to other sums which a non-resident may receive from the company by way of the interest on debentures or remuneration such as director's fees. If the non-resident is himself assessed through an agent, sub-section (3) provides that the amount deducted at the source in this manner shall be taken into account in determining the amount payable by him in respect of any other income.

These provisions should only be rigidly enforced in cases where the tax cannot be easily collected through an agent of the non-resident (section 43). In the case of registered firms it should in most cases be possible to treat the person who registered the firm as the agent of the non-resident partner and to require him to disclose the whole income accruing in India to such non-resident.

90. Rules.—Rules made under section 59 of the Act by the Board of Inland Revenue are contained in Part II of this Volume. With the exception of the rules first made under the Act, the power to make rules is, under section 59 (3), subject to the condition of "previous publication." The meaning of the phrase "subject to the condition of previous publication" is given in section 23 of the General Clauses Act, (Act X of 1897) *viz.* :—

"Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely :—

(1) the authority having power to make the rules or bye-laws shall before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye laws, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

91. *Composition not permissible.*—The provision in previous Acts that allowed a system of composition of assessment and enabled the Income-tax Officer under specified conditions to enter into compositions with assessees has been omitted from the present Act. No composition of assessment can, therefore, now be made although any composition entered into before the present Act came into force must be given effect to for the period for which the agreement was made.

92. *Assessment of Income-tax on married women.*—Although there is no specific provision to this effect in the Act, a married woman is chargeable as if unmarried and has to be separately assessed in respect of her separate income.

93. *Method of serving notices or requisitions.*—Under section 63 of the Act a notice or requisition may be served either by post or in any manner provided for the service of summons under the Code of Civil Procedure. The words "by post" under section 27 of the General Clauses Act, X of 1897, mean "by registered post."

Section 63 (2) specially provides that in the case of firms or Hindu undivided families a notice or requisition may be addressed to any member of the firm or to the manager or any other male member of the family.

94. *The determination of the Income-tax Officer by whom an assessment is to be made.*—While for the reasons given in paragraph 22 every Income-tax Officer is, under section 64 (4), vested with all the powers conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed, the question of the Income-tax Officer by whom a particular assessee is to be assessed has to be determined in accordance with the provisions of sub-sections (1) to (3) of section 64. Under those provisions, if an assessee carries on business, he has to be assessed by the Income-tax Officer of the area in which his principal place of business is situate; in all other cases an assessee has to be assessed by the Income-tax Officer of the area in which he resides. Where there is any doubt or dispute on any such question, the question is to be finally determined by the Commissioner of the province in which the areas are situate. Where the areas are situate in more than one province, the question is to be determined by the Commissioners of the provinces concerned in consultation, and where two Commissioners are not in agreement, the question will be determined by the Board of Inland Revenue. In all cases of dispute, however, before any such question is determined, the assessee must be given an opportunity of representing his views.

95. *Reference to High Court. (Section 66.)*—Under the Act of 1918 a reference to the High Court on a question of law might be made only



if the head of the income-tax department in a province saw fit. He was not required to make any such reference on the application of an assessee if satisfied that the application was frivolous or that a reference was unnecessary. Under section 66 of the Act, the Commissioner of Income-tax has no longer power to withhold a reference on these grounds but is required to state a case to the High Court on the application of an assessee. In order to provide against frivolous or unnecessary applications, sub-section (2) requires that every such application shall be accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed by rule made by the Board of Inland Revenue (no lesser sum has yet been prescribed). In order to safeguard the revenues, sub-section (7) provides that the fact that a case has been stated to the High Court shall in no way stop the collection of the tax from the assessee.

An application for a reference to the High Court can only be made after an appeal to the Assistant Commissioner under section 31 or an appeal under section 32 to the Commissioner has been disposed of. An assessee must therefore exhaust his remedies of appeal to the income-tax authorities before requiring a reference to the High Court. As it is desirable that questions of principle should, so far as possible, be settled by the revenue authorities, the proviso to sub-section (2) provides that if on receipt of such an application the Commissioner is himself prepared to give a ruling in favour of the assessee on the point of law raised, the applicant may withdraw his application for a reference to the High Court in which event the fee paid shall be refunded.

No reference may be made to the High Court on a question of fact. The Commissioner, under these provisions, may therefore only withhold an application for a reference to the High Court if he considers that a point of law is not involved. If he does withhold it on that ground, the applicant under sub-section (3) may apply to the High Court for a *mandamus* requiring the Commissioner to state a case, and if the High Court issues such a requisition, the Commissioner must state a case.

The Commissioner retains the power to state a case to the High Court on his own motion or on a reference from any income-tax authority subordinate to him. No authority other than the Commissioner is authorised to state a case for the High Court.

The application for a reference must be made by the assessee within one month of the passing of an appellate order, and the reference to the High Court must be made by the Commissioner within one month of the receipt of the application.

96. Assessment of insurance companies.—Under section 59 (2) (ii) special rules have been made prescribing the manner in which and the procedure by which income, profits and gains shall be arrived at in the case of insurance companies. The rules so made are rules 25 to 32 while rule 35 deals with the particular case of non-resident companies.

Under these rules the income, profits and gains of *life* assurance companies incorporated in British India are determined by taking the annual average of the total profits disclosed by the last actuarial valuation, adding thereto any deductions made from the gross income in arriving at the actuarial valuation which are not admissible under the Income-tax Act and adding also any Indian income-tax deducted from

or paid on income derived from investments before such income is received. If the *Indian income-tax* deducted at the source from interest on investments exceeds the tax on profits thus calculated, a refund is permitted of the amount by which the deduction from interest on investments exceeds the tax payable on profits. The same provisions under rule 26 apply also to the determination of the income, profits and gains derived from the *annuity and capital redemption* business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

For the purpose of refund in such cases it is the annual average of the tax deducted from the interest on the company's investments at the source that is to be taken and not, as has been sometimes claimed by insurance companies, the tax actually paid during a particular year of assessment. The reason for this is obvious. The method of assessment based on the previous valuation is itself a concession which, if the companies wish to enjoy, they must take as a whole. If there were to be a subsequent re-adjustment with reference to any of the transactions in the current actuarial period, this would have to be made after the period was closed with reference to the transactions of the company as a whole during that period, but this course would obviously not be suitable as it would mean very long deferred adjustments.

In other classes of insurance business (fire, marine, motor car, burglary, etc.), an annual calculation of profits is practicable, and rule 29 provides in the case of those particular businesses for the method of treating sums placed by companies carrying on some or all of these branches of insurance business to reserves for unexpired risks. The reasons underlying the concession granted in this rule should be carefully noted. The profits derived, for instance, by a Fire Insurance Company from the premia which it receives cannot be finally determined until the policies issued in return for the premia have expired and the risks to the company thereunder have terminated; and, as the periods during which the risks endure will not ordinarily coincide with the period on which the assessment to income-tax is based, it is necessary to frame some estimate of the expenditure which the company will be called upon to incur owing to the fact that the risks covered by its premium income in the year of assessment have not entirely ceased. With proper safeguards to prevent manipulation of the accounts, this estimate can equitably be made by treating sums placed by insurance companies carrying on these classes of business to their reserves for unexpired risks as expenditure incurred solely for the purpose of earning the profits of the business. And where, as not infrequently occurs, the reserve is divided into two parts of which the first is intended to cover normal unexpired risks and is generally reckoned at a fixed percentage of the premiums, and the second is intended to cover exceptional losses from widespread calamities, the rule allows this treatment to additions to both parts of the reserve. The safeguards against abuse which the rule imposes are as follows:—

- (1) All sums on account of unexpired risks, which a company wishes to have treated as expenditure for income-tax or super-tax purposes, must actually be credited to a Fund in the accounts of the Company;

- (2) They must also be specifically appropriated to meet liabilities under existing contracts; and
- (3) The contracts must be with policy-holders.

The only other fund established by insurance companies for which special provision is made in the rules (Rule 30) is the Investment Reserve Fund. Amounts actually credited by an insurance company of any kind in the ordinary accounts of its business for the accounting period to its Investment Reserve Fund for the purpose of meeting depreciation in the value of its securities can be treated as expenditure incurred for the purpose of earning the profits of the business in determining the taxable income of the insurance company in that year. The reasons for this departure from the general rule that reserves are not allowed as a business expense are as follows:—In the first place it may be noted that these adjustments are not optional; the company is required to make them in order to ensure that its assets are not overstated in the valuation. The transfer of sums by a Life Assurance Company to Investment Reserve Fund differs, moreover, essentially from the placing of amounts to reserve by a bank or ordinary commercial company, either for the purpose of extending its business, or for the provision of additional working capital: the sums thus placed to reserve are practically speaking composed of undistributed profits. There is also a substantial difference between this transaction on the part of an Insurance company, and that by which a bank writes off the depreciation of the securities which it holds. A bank meets depreciation by reducing its Reserve Fund: a Life Insurance Company meets it by reducing its Life Assurance Funds, and this reduction may be made either by writing down its assets or by leaving the assets unaltered, and setting up as a liability an Investment Reserve Fund equal to the depreciation. The latter course is usually adopted: but in both cases the depreciation is a loss, and to tax the amount of depreciation would lead to the anomalous result that the greater the loss to the company the greater would be the amount which it is required to place to its Investment Reserve Fund, and consequently the greater the tax it would have to pay.

On the other hand should the accounts show a credit for "appreciation" of assets, rule 30 provides for such appreciation being taxed. The words "as has been otherwise taken into account" in the latter portion of rule 30 mean "having been carried to the life assurance fund or otherwise taken into account."

The reason for the use of the word "may" instead of "shall" in rules 27, 29 and 30 is that while the concessions conferred by these rules should be granted as a general practice the income-tax authorities retain a discretion to refuse them where the concessions have been abused.

Companies carrying on *Dividing Society or Assessment* business are in a different position to the insurance companies proper in that they have not to build up funds similar to the Life Assurance Fund of ordinary Life Assurance business, and their profits are not ordinarily ascertainable by actuarial valuation. It is necessary, therefore, to fix some arbitrary method of determining the taxable income of companies transacting these kinds of business, and under rule 31 this is done by taking 15 per cent., of the premium income in the "previous year."

PART IV.

HIGH COURT RULINGS.

CASE NO. 1.

BENGAL HIGH COURT CASE, NO. 40 OF 1920.

"There can be little doubt that when a lease is granted, the amount fixed for periodical payment is not independent of the amount paid in a lump sum as premium. The capitalised value of the sum periodically payable taken along with the premium constitute in the aggregate the consideration for the grant; so that the larger the one element, the smaller the other. From this point of view, we must hold that the premium paid for the settlement of waste lands or abandoned holdings may reasonably be regarded as 'rent or revenue' derived from land, within the meaning of that expression as used in the definition of 'agricultural income,' in section 2 (1) (a)."

But these considerations do not apply to the *salami* or premium paid for recognition of a transfer of a holding from one tenant to another. When the transfer is recognised, the original tenancy continues, and there is no new demise. The sum paid as *salami* or premium in such circumstances is obviously not rent in any sense of the term; nor can it be deemed the return, yield, or profit of any land. The money is paid by the transferee to the landlord to purchase peace, so that he may not contest the validity of the transfer. We cannot hold that money so levied by the landlord can be comprised within the scope of the definition of agricultural income.

Finally, the contention that illegal *abwabs*, such as *uttarayan*, constitute agricultural income, is manifestly untenable. The item *uttarayan* is a voluntary payment, made by tenants, at one pice per rupee of their rents, for expenses of the *Bastu Puja* on the *Uttarayan Sankranti* day (the last day of the Bengali month *pous*) and for distribution of sweets and oranges to all servants of the estate, Government officers and local residents. The item consequently is an illegal exaction and cannot, on the widest interpretation which may be placed on the phrase 'rent or revenue,' be possibly included therein; nor can it be said to be derived, that is drawn, or obtained from the land. We do not feel pressed by the contention that if the income from the *uttarayan* be treated as assessable, there would be an indirect recognition of it by Government; for, all that we have to consider is, whether it is exempted from assessment, because, if not exempted, it must be taxed as included in the all comprehensive expression in section 3 (1), namely 'income from whatever source it is derived.' Reference may in this connection be made to the decision in *Partridge V. Mallandaine*. In that case, it was ruled that persons receiving profits from betting systematically carried on by them throughout the year as book-makers on race courses, were chargeable with income-tax on such profits, even though bets were considered null and void and not recoverable in law. Denman J. said that even an illegal vocation would be taxable on its income, as 'if a man were to make a systematic business of receiving stolen goods, and to do nothing else and were thereby to make a profit of say £2,000 a year, the Income-tax Commissioner would be quite right in assessing him if it were in fact his vocation.' We hold accordingly that income derived from illegal *abwabs*, such as *Uttarayan*, is not exempt from assessment."

CASE NO. 2.

PATNA HIGH COURT CASE, NO. 74 OF 1919.

Miscellaneous Judicial Case.

The question upon which the opinion of the High Court is sought is whether the Bhikanpur Sugar Concern is liable to pay income-tax in respect to that portion of its profits derived from the sale of the finished article in so far as it is manufactured from sugar-cane grown by its own servants on its own land, or whether it is exempted on the ground that such income is "agricultural income" within the meaning of sections 2 and 4 of the Act. By section 4 income of this nature is not chargeable to income-tax. By section 2 agricultural income is defined. By clause (1) (b) of that section agricultural income includes any income derived from (i) agriculture, or (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market.

It is contended on behalf of the factory that the income derived from the sale of the finished product manufactured by them at their factory from the raw material grown upon their own land is covered by the words of section 2 (1) (b) which I have just quoted. In order to determine this question it is necessary to consider the circumstances under which the factory carries on its business. It is owned by a private company, the business being conducted under the direction of a Manager who is also a share holder in the Company. It owns a sugar factory equipped with modern machinery by which the sugar-cane is converted into refined sugar ready for domestic purposes. It carries on business on a large scale. During the year of assessment 744,393 maunds of sugar-cane

of which rather more than half was grown on the factory's own land passed through the mills, the remainder being purchased from cultivators of sugar-cane in the neighbourhood. The gross proceeds of this sugar-cane amounted to nearly 6 lakhs of rupees and that of molasses for the same period to about Rs. 44,000. The net profits for the year were stated to be Rs. 1,75,000 on which income-tax has been assessed at Rs. 10,937. The factory has lodged an objection in respect to Rs. 7,801 of this assessment as representing a tax on the profits derived from sugar-cane grown by themselves. From the accounts it appears that the agricultural branch which deals with the cultivation of the raw material and the factory branch are kept separate. It is not stated what the profits of the agricultural branch are but these would appear to be exempt from taxation. The process of manufacture adopted by the factory is similar to that employed by other sugar refineries in other parts of the world.

The main question for determination is whether the process of manufacture carried on by the company can be said to be the performance by a cultivator of any process ordinarily employed by a cultivator to render the produce raised fit to be taken to market. In order to determine this it is necessary to enquire as to what are the processes ordinarily employed by cultivators of sugar-cane. It is common ground that the vast bulk of the sugar-cane in this country is cultivated by raiyats of agricultural villages. This they either sell in a raw state to middlemen or owners of factories or country mills or they reduce it by certain simple processes of crushing and boiling to a substance known as *rab*, a kind of molasses in a crude state and then sell it to the factories where it is subjected to a further process of refinement in order to make it fit for domestic use as sugar. It is also not disputed that a very small fraction of the sugar-cane produced in this country is grown by the owners of factories themselves.

* * * * *

I have stated enough to show that the processes employed by the factory are in kind as well as in degree vastly different from those ordinarily employed by a cultivator in order to render the produce fit for the market. Indeed the market to which the cultivator ordinarily takes his wares is not the same market as that in which the refined sugar manufactured by the factory is sold. The market of the vast majority of cultivators of sugar-cane is the sugar refinery itself or the country mill. The market of the sugar factory is the retail dealer of the finished product fit for domestic use, and in my opinion it is not possible to hold that the processes employed by a sugar factory in order to render it fit for their customers are those ordinarily employed by a cultivator to render it fit for his. It is true that the cultivator in some cases subjects the raw material to certain manufacturing processes resulting in the production of the juice or *rab* before disposing of it to his customers but even assuming that the performance of these processes by the cultivator would come within the meaning of section 2 (7) (b) (ii) the matter so far as he is concerned stops there and a great deal more has to be done by the factories to refine and crystallize the product before it is fit for the market with which they deal.

It was contended on behalf of the objector that the words "process ordinarily employed" have reference to the processes ordinarily employed by sugar factories or anyone else if they happen to be cultivators in rendering the produce fit for the market and that if a person is a cultivator and employs such processes in the ordinary course of his business he comes within the exemption created by the section. I do not think the section can be read in this sense. It refers to the performance by a cultivator of a process ordinarily employed by a cultivator which I think means in ordinary use amongst cultivators and not to a process ordinarily employed by any body else, and had the meaning been that contended for, it is difficult to see what interpretation can be given to the words "by a cultivator or receiver of rent-in-kind."

It is next contended that as this is a taxing statute it should be strictly construed in favour of the subject and if there is any ambiguity in the meaning he should be allowed the benefit of the doubt. I do not think the construction of the section gives rise to any difficulty. The real question for determination is one of fact, viz., whether the process employed by the factory is that in ordinary use by cultivators and in my opinion the evidence shows that it is clearly not.

It is further contended that the history of the assessment to taxation of the income of the Bhikanpur factory throws some light upon the intention of the legislature.

* * * * *

I agree where there has been a long course of decisions determining the construction of a statute, this may be taken into consideration in constraining a new enactment passed in the same terms as pre-existing statutes but a single decision such as that referred to cannot in my opinion form the basis of any presumption as to the intention of the legislature in the present case. Moreover, as is pointed out by Mr. McPherson in the order of reference the word "factory" which appears in the proviso to sub-clause (c)

of section 5 of the old Act has been omitted from section 2 (1) (b) (iv) of the present Act "presumably lest its presence might lend colour to any claim of the nature now under consideration."

It is further contended that the factory was never taxed before the year 1916-17 and for many years they have made an income from sugar.

* * * * *

I do not think the fact that it has escaped taxation in the past is in itself a good reason why it should still escape unless it is in fact exempted by the Income-tax Act itself. In my opinion they are not exempted under the clauses of the Act relied on for the reasons above given and I would answer in the affirmative the question submitted to us whether the Bhikanpur Concern is liable to income-tax in respect to that portion of its produce which is derived from sugar-cane grown by its servants on its own land and in the negative the question whether it is exempted by reason of the provisions contained in section 2 (1) (b) (ii) of the Act.

A further point was taken by the learned Advocate General on behalf of the Board of Revenue, *viz.*, that a company in the position of the Bhikanpur Concern cannot be said to be a cultivator within the meaning of section 2 of the Act. He pointed out that the Company really consisted of two distinct entities, one interested only in the production of sugar-cane and the other in the manufacture of refined sugar and the accounts show that the factory branch really bought from the agricultural branch the raw sugar-cane at a fixed valuation of 7 annas per maund which was credited to the agricultural branch in the factory accounts and that in such circumstances the cultivation of the raw material was only ancillary to the manufacture of the finished product whereas in the case of a cultivator contemplated by the Act the process of manufacture, such as it is, is merely ancillary to the cultivation of the raw produce in order to make it fit for the market. In support of this contention the case of the Stamp Reference reported in I. L. R., 5, All. 360, was relied upon. That case dealt with the meaning of the term cultivator in the second schedule of the Stamp Act of 1879 and held that it did not include farmers, middlemen or lessees even though cultivation was to some extent carried on by them in the area covered by their lease but included only those persons who actually cultivated the soil themselves or by members of their household or by hired labour and with their own or hired stock. The question in that case was whether a kabuliya executed by a lessee of certain land the greater portion of which was not cultivable or susceptible of being treated as a cultivator's holding was exempted from stamp duty under the Act of 1879. The Court found that although some small portion of the land might have been brought under cultivation by the lessee he was not a cultivator within the meaning of the Act having regard to the purposes for which the land was held. That case does not in my opinion support the contention of the learned Advocate-General in the present case. Having regard to the purposes for which the Company's land was used and the fact that they did cultivate it for their own purposes by their own servants, I think they must be held to be cultivators within the ordinary meaning of that term. But in so far as they were carrying on a business of sugar manufacturers I do not think that the processes used by them for that purpose were those ordinarily employed by cultivators for the purpose of rendering the produce fit to be taken to market. The truth is, in my opinion, that the Bhikanpur Concern was really acting in a dual capacity. In so far as they were cultivators of sugar-cane their operations ceased when they handed over the raw material to their factory branch. In so far as they were manufacturers of refined sugar they were carrying on a business which required the adoption of manufacturing processes not ordinarily used by cultivators before disposing of their produce in the market. In fact there is no evidence to show that any other sugar factories of this nature convert into refined sugar produce grown on their own farms but even assuming that there may be a few isolated instances in which this is done it cannot in my opinion be said that this process of manufacture is one ordinarily employed by a cultivator.

CASE NO. 3.

BENGAL HIGH COURT CASE, NO. 83 OF 1920.

The question for determination is, whether the Killing Valley Tea Company are liable to be assessed on their annual profits under the Income-tax Act.

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It cannot be disputed that section 3, sub-section (1) makes the profits of the Company liable to assessment unless such profits constitute "agricultural income" within the meaning of section 4 read with section 2, clause (1). The income-tax authorities have held that the profits do not constitute agricultural income. The Company maintain the opposite conclusion. We are of opinion that both the contentions are erroneous.

The process employed by the Company for the cultivation of tea bushes and manufacture of tea as a commercial commodity are thus described in their statement of case :

" After the tea bush has been planted and has arrived at a proper state of maturity, the young green leaf is selected and plucked by hand from the bush. It is then dried or withered and rolled, dried and stored. The actual dried and rolled leaf, the produce of the tea bush, is then sent to the market. In the very early days of tea cultivation, the green leaf was dried or withered in the sun and was then rolled by hand. This primitive method was replaced by machinery. The effect of these processes being carried out by machinery in no way alters the processes or affects the result. It only leads to a quicker manipulation of the leaf. The types of machinery at present in use are those which have been in use for the past fifty years, or thereabouts. The actual leaf of the tea plant, without the addition thereto of the processes above described, is of no value as a market commodity."

The counter-statement on behalf of the Crown is expressed in the following terms : " It is contended on behalf of Government that the manufacturing processes carried out in a modern tea factory, with scientific appliances and up-to-date machinery, are different from those ordinarily employed by a cultivator to render the produce raised by him fit to be taken to market. In former times, the process of manufacturing tea was very simple and primitive. The leaf was rolled by hand and was then ' fired ' in an iron pan over an open fire . It is understood that this method was introduced from China, where it was the ordinary method employed by the cultivators in making tea. The process employed in a modern tea factory goes far beyond this. The factory is driven by steam or electrical power throughout; the tea is first withered; it is then passed through a machine which rills it and is left for a short time to ferment, this process being repeated two or three times; it is then placed in another machine where it is ' fired ' by means of hot air from a furnace which is forced through by mechanically driven fans; and finally, it is sorted into grades by machinery and packed for export or sale in the Calcutta market. It is submitted on behalf of Government that this process is different from the method described above by which the Chinese cultivator prepared his tea for market and which was the original method of tea-making in India. The present day method is a process of manufacture and not merely a process ordinarily employed by a cultivator to render the produce raised by him fit to be taken to market."

It appears to us to be clear from the respective cases just set out that the process in its entirety cannot be appropriately described as agriculture. The earlier part of the operation when the tea bush is planted and the young green leaf is selected and plucked may well be deemed to be agriculture. But the latter part of the process is really manufacture of tea, and cannot, without violence to language, be described as agriculture. Counsel for the Company appreciated this difficulty and made an endeavour to bring the case under the second clause of the definition. That clause, in our opinion, cannot be applied to the case before us. The manufacture of tea as a marketable commodity from the green leaves cannot be held to be the performance by a cultivator of a process ordinarily employed by a cultivator to render the produce raised by him fit to be taken to market. The assertion of the Company that the actual leaf of the tea plant is of no value as a marketable commodity must be taken with a qualification. The green leaf is not a marketable commodity for immediate use as an article of food, but it is a marketable commodity to be manufactured by people, who possess the requisite machinery into tea fit for human consumption.. We must further observe in view of the expression used in the definition, that the manufacturing process cannot properly be said to be employed to render the tea leaves *fit to be taken into the market*. The means employed for the cultivation and manufacture of tea are well-known and are succinctly stated in an article on tea by Mr. John McEwan in Volume 26 of the Eleventh Edition of the Encyclo-pedia Britannica ; they are described in fuller detail in the standard works on cultivation and manufacture of tea by Lieutenant-Colonels E. Money and David Crole. There can be no doubt, in our opinion, that the entire process is a combination of agriculture and manufacture.

The principle applicable to cases of this character is now well-settled. In the case of *Inland Revenue Commissioners v. Ransom* (1), the respondents, who were a limited company carrying on business as manufacturing chemists and growers of medicinal and other herbs, owned a factory where the manufacture and distillation of herbs were carried on, and they also occupied a farm on which they grew herbs for treatment in the factory. The respondents were assessed to excess profits duty. On appeal by them against the assessment, it was ruled that the occupation of the farm was the business of husbandry and that the profits of the farm should consequently be excluded for the purpose of excess profits duty under section 39 of the Finance Act, 1915, so that what remained as the profits of the factory could alone be assessed. This view was supported by reference to the dictum of Lord Parker in *Mitchell v. Egyptian Hotels* (1), that there was no reason why a corporation, any less than an individual, should not be engaged in more than one trade or business at the same time. The same question of apportionment arose

in Commissioners of Inland Revenue *v. Maxse* (2), where the Court of Appeal reversed the decision of Sankey J. in Inland Revenue Commissiouers *v. Maxse* (3), and ruled that the proper course when a trade or business liable to duty is carried on in connection with a trade or business not so liable, is to sever the profits of the two businesses and assess accordingly. The appellant was the sole Proprietor, Editor, and Publisher of the *National Review* and was assessed on the profits of this publication. The General Commissioners held that the appellant was exempt from the duty, as he was the Chief Contributor to the review, and thus carried on the profession of a journalist, the profits of which depended mainly on his personal qualifications within the meaning of section 39(c) of the Finance Act, 1915. On appeal, Sankey J., set aside the order for exemption as, in his opinion the appellant was not in the position of an ordinary journalist receiving remuneration for articles contributed to the press, but derived his profits from the sale of a commodity, thereby carrying on an ordinary commercial business. The Court of Appeal reversed this decision and directed that the profits should be apportioned, even though the apportionment might be a difficult operation. The truth was, as Warrington, L. J. pointed out, that the profits were derived from two businesses, one of which was a profession exempt from duty, while the other was not so exempt and was assessable with duty. See also *Inre Bhikanpore Sugar Concern* (1). The Legislature had obviously this class of cases in view, as is clear from the provisions of section 43, sub-section (2), which embodies the following rule :—

"Without prejudice to the generality of the foregoing power (that is, power to make rules for carrying out the purposes of the Act and for the ascertainment and determination of any class of income), such rules may, when income is derived in part from agriculture and in part from business, prescribe the manner, whether with deference to a class or in particular cases, by which the taxable income shall be arrived at."

No rules, such as would be applicable to the case before us, have yet been framed. When they are framed and operate as statutory rules, an assessment may be made on such portion of the profits of the Company as do not fall within the description "agricultural income."

But although we hold that the profits of the Company are not entirely exempt from assessment, it is plain that the assessment which has actually been made cannot be sustained, as it stands; for that assessment is in excess of the sum which may be lawfully levied, and the extent of the excess is yet unknown, see the observations of Swinfen Eady, M. R. in *Commissioner of Inland Revenue v. Maxse* (2).

Great stress has naturally been laid by Sir Binod Mitter, who appeared on behalf of the Company, on the important fact that no attempt was ever made to assess the Company to income-tax under the corresponding provisions of the Indian Income-tax Act (1886), which have been, so far as the present question is concerned, reproduced with no substantial variation in the Indian Income-tax Act (1918). This is no doubt a circumstance to be taken into consideration, for an interpretation which has long been acted on, will not be disregarded by a Court of Law.

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and the Court should have regard to the construction put upon a statute when it first came into force : * * * * * But * * * * *

where the Court is called upon to construe an Act of Parliament expressed in unambiguous language, it ought to put its own construction upon it, regardless of the construction that has been commonly put upon it; the fact that a mistaken interpretation has been generally put upon it cannot alter the law. To the same effect are the observations in *Baleswar v. Bhagirathi* * * * "It is a well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons, and, in a clear case of error, a Court would without hesitation refuse to follow such construction."

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We may add that it was stated by the Advocate-General that there has been some divergence of opinion among successive legal advisors of the Crown and that the assessment has been made in this instance with a view to obtain a judicial determination of the true meaning of the legislative provisions on the subject. Clearly we cannot, in such circumstances, allow our decision to be controlled by the conduct of the Revenue Authorities in the past. We have finally been pressed to apply the elementary rule that taxing statutes must be construed strictly :

* * * * * * * * * * *

Now, there is no room for controversy that the Crown seeking to recover the tax, must bring the subject within the letter of the law, otherwise the subject is free, however, much within the spirit of the law the case might appear to be. There can be no equitable construction admissible in a fiscal statute; the benefit of the doubt is the right of the subject :

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Bearing all these principles in mind, we hold that the Company must be taxed to the limited extent indicated, because they come within the letter of the law to that extent.

CASE NO. 4.

MADRAS HIGH COURT, CASE NO. 4 OF 1919.

The officiating Chief Justice . This is a case stated by the Board of Revenue, under section 51 of the Income-tax Act, VII of 1918, in which the question involved is whether the assessee a Nattukottai Chetti, who is the proprietor of a money-lending business carried on his behalf by his agents in various places including Saigon, Sodac and Khando situated in French-Cochin China, is liable to be taxed, under the provisions of this Act, in respect of the income of the business though not received in British India.

The learned Advocate General on behalf of the Crown has based his contention on two grounds; firstly, that the income in question accrued or arose to the assessee in British India inasmuch as he was entitled to call upon his agents to pay the income to him in British India, and, secondly, that * * * the business the income of which is sought to be taxed must be held to have been carried on in British India and, therefore, the income of that business is taxable.

It will be convenient to dispose of the last contention first. The facts in this connection as submitted are as follows :—The entire business operations producing the income are conducted at the places above mentioned outside British India by agents appointed for fixed periods who use their own discretion in lending money to customers. The only part taken by the proprietor in connection with the business is to acquaint himself with the state of the business abroad and occasionally to issue general instructions. It is impossible for us, on these facts, to hold that the business is one carried on in British India.

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The business here is that of money lending and the mode of carrying it on is left entirely to the discretion of the agents in the places where the lending operations are conducted. The mere issuing of general instructions occasionally by the proprietor in British India and the fact of his being supplied with information from time to time as to the state of the business would not at all bring the case within the purview of the ruling referred to. As in no sense, in my opinion could the business in this case be said to be managed and controlled by the proprietor in British India, the statement of Lord Lobeburn in *De Berers Consolidated Mines, Limited versus Howe* (1906) App. Cas. p. 455 "that the real business is carried on where the Central Management and Control actually abides" has no application. On the other hand, the observations of the Privy Council in *Lovell and Christmas, Limited versus Commissioner of Taxes* (1908) App. Cas. p. 46 at p. 51 apply rather closely to the facts of the case. Their Lordships observe, "One rule is easily deducible from the decided cases. The trade or business in question in such cases ordinarily consists in making certain classes of contracts and in carrying those contracts into operation with a view to profit; and the rule seems to be that where such contracts, forming as they do the essence of the business or trade, are habitually made, there a trade or business is carried on within the meaning of the Income-tax Acts, so as to render the profits liable to income-tax." It is, therefore, unnecessary to express an opinion on the question whether the income of a business controlled and managed by a person residing in British India, although the actual operations giving rise to the income are carried on, as in this case, outside British India, would be assessable to income-tax.

At one time the Advocate-General seemed even to argue that it is section 9 (1) by which the tax payable on account of income derived from business is to be determined. All that it says is, "that the tax shall be payable by the assessee under the head 'Income derived from business' in respect of the profits of any business carried on by him," and the rest of the section deals with the mode in which such profits shall be computed. If section 9 (1) be taken to furnish the whole test, then section 3 (1) would have to be excluded from consideration in dealing with the income derived from business. But the Advocate-General was not really prepared

to go so far; at any rate, there can be no doubt that section 9 (1) must be read along with section 3 (1) and that it is the latter that lays down the test to be applied in determining all incomes assessable to the tax including income derived from business. If a certain income derived from business cannot be said to accrue or arise or to be received in British India, that income would not be assessable by virtue of anything contained in section 9. In fact the main argument in this connection has been that the income of a business, which is managed and controlled by the proprietor in British India, accrues or arises in British India within the intendment of law, and because it so accrues or arises, is taxable.

The first part of the argument does not really present any difficulty, for the language of section 3 seems to be unambiguous. The tax is leviable with reference to the place where the income accrues or arises or is received and not with reference to the residence of the person who is entitled to the income. This seems to be the entire scheme of the Act and sections 31 and 33 would appear to be illustrations of that principle. Whatever meaning be attached to the words "accrue" or "arise" or such as "grows" or "becomes due or payable," it is impossible to hold that the income in this case could be said to have accrued or arisen in British India. If loans are made and the borrowers reside outside British India and if accounts are adjusted, the moneys lent are realised with profit or are capable of being realised and the profits are periodically ascertained and dealt with outside British India, it is impossible to hold that the income of such business accrued or arose in British India.

A number of English decisions were discussed before us; but it is unnecessary to deal with them in any detail, because the English Statute under consideration in those cases differs in many material respects from the Indian Act. In the English Statute the place of residence of a person is a basis of assessment but is not so as pointed out above in Act VII of 1918.

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Then the learned Advocate-General at one stage of his argument seemed to contend that the income sought to be assessed should be deemed to accrue or arise or to be received in British India under the provisions of this Act, but this argument is clearly untenable. In the first place this phrase refers to cases set out in the Act itself (see for instance section 6 (2), section 8) and none of them have any application to the case under consideration, and in the second place as I have shown there is no general rule of law by virtue of which the income sought to be assessed could be said to accrue or arise in British India.

If we look at the history of this enactment, the case sought to be made on behalf of the Crown appears to be still more untenable. * * * * * the Advocate-General himself has informed us that, at least before 1915 or 1916 when he was consulted with respect to certain cases of a nature similar to this, the general practice of the Revenue Department was not to assess income of business carried on outside British India but the proprietor or proprietors of which resided in British India. We are justified in assuming that the legislature was aware of this practice, and if with that knowledge they repeated in the new enactment the same words on which the practice of the Government was founded, it gives rise to the presumption that they did not want to assess such incomes. If the legislature intended to assess these incomes, and it would have been a very substantial source of public revenue, they could have easily said, as in the English statute, that income accruing to a person in British India from any business wherever carried on is liable to be assessed.

I would hold, therefore, that the income of the business under reference, is not liable to be assessed under the provisions of Act VII of 1918.

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Oldfield J. * * * * * Respondent has in the French Territory of Saigon a money-lending business conducted by an agent, and (according to the statement in his petition, which is adopted in the case submitted to us) keeps himself acquainted with its progress and occasionally issues general instructions. He, however, resides in this Presidency and receives no income from Saigon. On these facts is he liable for tax on the profits of this business or, as he contends, will he be so, only if and when the profits are remitted to him here?

I agree with the learned Chief Justice that the answer to the first of these questions must be in the negative; and to justify that conclusion I refer to the scheme of the Income-tax Act of 1918, under which the case has to be decided.

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The point is at present that section 3 (1) affords a comprehensive definition of income for the purpose of the Act and that this definition is to be regarded as controlling, not as enlarged by, the language subsequently used in classifying the different descriptions of such income and prescribing the method of assessment for each.

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The primary meaning given for the word in the Oxford Dictionary is "to arise or spring as a natural growth or result;" in Webster's Dictionary, "to come by way of increase," and in Wharton's Law Lexicon "to grow to or arise." These, the only authorities referred to, show that the origin of the thing, which accrues, in the exertions of some person or otherwise, is not an essential element in the definition of the word "accrue" and cannot affect its application. This is fatal to the attempt made in the first form of the argument to identify the place of accrual referred to in section 3 (1) with the place in which such exertions, in the present case by carrying on business, have taken place. I however, refer at once to sections 10 (3), 31 and 33 of the Act, in the light of which it is contended that section 3(1) should be construed. It might be sufficient to say that the first in which a very definite exception is specified, and the others occurring in a chapter headed "Liability in special cases," cannot be invoked as exemplifying any general principle or controlling a general definition. But in fact the sole similarity between the cases dealt with in these provisions and the case before us is that all relate to profits earned where they are not enjoyed. The special provision in section 10 (3) for liability to assessment in British India of professional fees, which a resident there has received elsewhere, can be referred to no general foundation and is merely the recognition of a presumption of law that the earnings of a resident in British India will be brought there for enjoyment, whilst sections 31 and 33 (of which the former statedly deals only with income chargeable under the Act) are easily intelligible provisions for the liability to the tax of the person, through whose hands in one capacity or another the profits in question will pass in British India and whom therefore the Crown can reach in order to collect it. It may on the other hand be observed that the existence of special and explicit provision in section 10 (3) for the taxation of the one kind of income not received in British India is strong reason for refusing to hold others liable by implication. The argument of the learned Advocate-General in the first form is accordingly unsustainable with reference either to the significance of the word "accrue" or to any construction of section 3 (1) with reference to other parts of the Act: and it must be rejected.

His argument in its second form derives at first sight some support from the secondary meanings of "accrue" given in the Century Dictionary as used in law for "to become a present and enforceable right" and in Bouvier's Law Lexicon as "to become a present right of demand," the suggestion being that respondent's profits in Saigon accrued to him in British India, when, being in the latter place, he had a right to demand them of his agent in the former; and to show that income is regarded in the Act as accruing, before it is received and when there is only a right to receive it, reference has been made to the use of the word "receivable" in section 7. There is, however, a short answer to this. Firstly, this meaning of "accrue" is excluded by the context in section 3 (1). For it is not the right to demand the profits, which it is proposed to tax, but the profits themselves. And secondly, if the word "receivable" in section 7 is interpreted in the light of the provision in section 15 (3) for the method of payment of the tax on interest on securities the description of income with which section 7 deals, its use will be seen to involve recognition, not of any kind of income as existing independently of and before its receipt, but of income, to which liability for the tax attaches at the moment of its receipt, when the tax is to be deducted by the person responsible for its disbursement.

Some attempt has been made to support this argument by reference to English decisions. But it is useless to deal with them at length in view of the material differences between the wording of the Act before us and that of the English statute in question.

CASE NO. 5.

MADRAS HIGH COURT, CASE NO. 4 OF 1921.

" Now the income which is taxable under the Act, is, as provided in section 3.

All income from whatsoever source it is derived if it accrues or arises or is received in British India or is under the provisions of this Act, deemed to accrue or arise or to be received in British India."

And under section 33 (1), in the case of any person residing out of British India.

" All profits or gains accruing or arising to such person whether directly or indirectly,

through or from any business connexion in British India shall be deemed to be income accruing or arising in British India."

And is consequently taxable under the express provisions of section 3. It makes no difference with regard to this section whether the non-resident entitled to the income is a British subject or a foreigner; in either case he is chargeable with the tax in British India. It has, however, been argued that because section 33 (1) not only provides that such profits and gains shall be deemed to be income accruing or arising within British India, but goes on to provide that they "shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be the assessee in respect of such income-tax," the profits and gains in question are not chargeable unless they are assessed to income-tax in the name of an agent of the non-resident. This construction is not supported by the proviso immediately following:—

"Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person, which are or may at any time come within British India," which supports the construction that the profits or gains are chargeable if they can be got at in British India whether they are assessed in the name of an agent of the non-resident or not. This was expressly decided on the corresponding section of the English Act by Mathew and A. L. Smith, J. J., in *Tischler v. Aptthorpe* (1), which was approved by the Court of Appeal in *Werle & Co. v. Colquhoun* (1), and it was held that a non-resident, who had been himself assessed whilst in England had been properly assessed. All that the latter part of the section does is to provide machinery by which the tax can be levied where the non-resident cannot himself be got at.

In the present case, the petitioner resides and has his principal place of business in the Cochin State in Mattancherri, which adjoins British Cochin and practically forms one town with it, and the petitioner not only does a large part of his business in British Cochin as stated in the reference, but also accepted notices and submitted the necessary returns to the Collector of Malabar, of which British Cochin forms a part for income-tax purposes. The reference states that "Contracts for the supply of goods are entered into and signed at the offices of firms in British Cochin and the goods are delivered at the jetties of the purchasers: the sale-proceeds are paid to the firm's agent or other duly authorized servant in cash in British India or by cheques, which are cashed in Banks in British India."

In these circumstances, it seems clear that these are profits and gains arising to the petitioner through or from his business connexions in British India in respect of which he is assessable under the Act.

CASE NO. 6.

PATNA HIGH COURT, CASE NO. 102 OF 1920.

Dawson Miller, C. J.

This case comes before us on a reference by the Board of Revenue section 51 of the Indian Income-tax Act, 1918. The reference was made upon the petition of Raja Jyoti Prashad Singh Deo of Kashipur, whose taxable income has been assessed by the Deputy Collector including a sum of Rs. 1,70,706 the amount derived by him from rents and royalties of certain collicries. Road cess and Public Works cess amounting to Rs. 10,669 have also been levied on these rents and royalties under the Cess Act. The petitioner claims that this amount should be deducted in assessing his taxable income derived from the source named. The question submitted for our determination is whether the full amount of the rents and royalties received is subject to income-tax, or whether, as the petitioner contends, the amount paid in respect of cesses should be deducted in ascertaining the taxable income. Section 5 of the Income-tax Act enumerates the classes of income which shall be chargeable to income-tax. They are (i) salaries, (ii) interest or securities, (iii) income derived from house property, (iv) income derived from business, (v) professional earnings, and (vi) income derived from other sources. With regard to each of these sources of income, the Act provides how the taxable income shall be arrived at and what allowances shall be taken into account in determining the amount to be taxed. For the purposes of this case it is only necessary to refer to the provisions made with regard to class (iv) "income derived from business" and class (vi) "income derived from other sources" as it is under one or other of these heads that the income in question falls. In my opinion the income in question falls under class (vi) but as the petitioner's first contention is that it falls under class (iv) it is desirable to refer to the sections of the Act which deal with both these classes. Income derived from business is dealt with in section 9 of the Act, which provides that the tax shall be payable by an assessee under the head "income derived from business" in respect of the profits of any business carried on by him. It then sets out the allowances, which may be deducted in computing the profits. These include any rent paid for the premises in which the business is carried on, repairs to the premises, interest on capital borrowed for the

purposes of business, premiums paid for insurance on the buildings, machinery or plant and repairs to the same, certain sums for depreciation and renewals, sums paid on account of land revenue, local rates or Municipal taxes in respect to the premises, and lastly any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits.

Section 11 deals with income derived from other sources and provides (1) "The tax shall be payable by an assessee under the head income derived from other sources in respect of income and profits of every kind and from every source to which this Act applies (if not included under any of the preceding heads) with the exception of agricultural income (2) such income and profits shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making such income or earning such profits, provided that no allowance shall be made on account of any personal expenses of the assessee.

The petitioner contends in the first place that the income derived from rents and royalties is income derived from business and that it is only the profits arising from such business that are taxable and the profits can only be arrived at after deducting expenses such as cesses and other expenses chargeable to revenue account which he is bound to pay. He admits that the deductions now claimed are not included amongst those which are prescribed in section 9 of the Act although that section does provide for the deduction of an allowance in respect of land revenue, local rates or Municipal taxes in respect of business premises. If it is legitimate to draw any inference from the inclusion of local rates and Municipal taxes amongst the allowances permissible under the Act the inference would point to the conclusion that it was the intention of the legislature to exclude cesses and similar charges other than those mentioned in the section. In fact if the petitioner's contention be correct that he is entitled in determining the taxable profits to exclude all expenditure chargeable to revenue account it would have been unnecessary for the legislature expressly to include land revenue amongst the allowances to be taken into account in computing the taxable profits. The petitioner contends, however, that the allowances mentioned in section 9 and indeed in the other sections dealing with the tax payable are not exhaustive, and that it is only the profits of the business which can be taxed. Although in the view I take upon the first point raised by the petitioner it is not necessary definitely to decide this question, I am of opinion that this branch of his argument cannot be supported. If in assessing the taxable income cesses must first be deducted it would seem to follow that in determining the amount of cess payable under the Cess Act upon the "annual net profits" derived from similar property the amount of income-tax should first be deducted, but it was held in *Manindra Chandra Nandi v. Secretary of State for India* (I. L. R., 34, Cal. 257) that an owner of mines is liable to pay both income-tax and road cess tax on the same net profits derived, or royalty received, by him from the mines. That case in so far as it dealt with the liability to pay cesses was affirmed by the Judicial Committee of the Privy Council (see L. R. 38; L. R. 31; s. c. I. L. R., 38, Cal., 372). No case has been called to our attention in which taxes imposed by statute unless specially provided for in the Act have been deducted in computing the amount payable either for cess or income-tax, but as in my opinion the income derived from rents and royalties of collieries does not come under the head of income derived from business it is unnecessary definitely to determine this point. It seems to me that the income in question is no more income derived from business than is the income derived from the lease of house property or land used for the purpose of carrying on business. The royalties received in the present case do not depend upon the profits earned by the lessees of the mine, but upon the quantity of coal raised and the royalty will be payable whether the lessees make a profit or not and section 9 has no application to the present case.

I am of opinion that the case falls under section 11 which refers to income derived from other sources. The petitioner contends in the second place that even if this is so the cess should be deducted from the taxable income. His argument based upon this section is two-fold. In the first place he points out that the section refers to both income and profits, that income may comprehend something wider than profits, but that the royalties in question are profits and can only be ascertained after deducting all out-goings necessarily incurred not only for the purpose of earning the profits, but charged thereon by statute to revenue account. It is true that the section relates to both income and profits. The section, however, is dealing with various kinds of income and includes all those not specially mentioned in the first five classes referred to in section 5 and it is quite conceivable that the word "profits" would be a more apt term than the word "income" to describe some of the cases included. But I can see no reason why royalties received from mines should be regarded as anything other than income in the ordinary sense. There is no definition of the word income in the Act itself, but its meaning as there used can I think be determined with sufficient accuracy from a perusal of the Act. Without giving an exhaustive definition it may be described as the annual or periodical yield in money or reducible to a money value arising from the use of real or personal property or from labour or services rendered, bearing in mind that in some cases, e.g.,

income derived from house property the yield must be taken as the *bona fide* annual value and not necessarily as the actual yield. Investments and rents derived from houses and land are instances of income arising from the use of property whilst salary, wages and professional earnings including pensions are instances of income arising from labour or services rendered. Income derived from business may, in certain cases, be a combination of both classes. It is not, however, the gross income so derived that is in all cases the taxable income. Certain allowances from the gross income are provided for by the Act and certain classes of income are exempt, but unless the exemptions or allowances are provided for by the Act there would appear to be no ground for holding that such are permissible. In the present case the only allowance provided for in section 11 is any expenditure not being in the nature of capital expenditure, incurred solely for the purpose of making such income or earning such profits. As a last resort the petitioner contends that the amount levied for cesses is an expenditure incurred solely for the purpose of making the income, but it would, in my opinion be an undue straining of plain language to say that the payment of road-cess is an expenditure incurred solely for that purpose. The liability to pay cesses results from the income having been made, and the payment of the cess can hardly be said to form a necessary part in the making of the income, which must come into existence before the liability to cess arises. The payment of cess is a necessary expense arising in connection with the ownership of royalties but it is in no sense an expenditure incurred for any purpose incidental to the making of the income.

In my opinion the question submitted for decision to the High Court, viz., whether payments made by the petitioner on account of the local cess are to be deducted before his income is assessed to income-tax under section 11 of the Income-tax Act must be answered in the negative. The petitioner will bear the costs of this reference.

Mullick, J.

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In my opinion clause 2 of section 11 is exhaustive and no rates or taxes of which the basis of calculation is net profits after such profits have been earned can be deducted in making the computation. A comparison of clause 2 (ix) of section 9 the wording of which is identical with clause 2 of section 11 would seem to make it clear that expenditure incurred for the purpose of earning income or profits means sums paid or liabilities incurred, the purpose of which is to feed the spring from which the income is derived. The expenditure must be incurred as a condition precedent to the production of the income. The payment of a tax which is conditional on the making of an income and which is to be calculated on the amount of such income after it has come into existence cannot be said to be expenditure for the making of such income. For our present purposes the term net profits as used in the Cess Act is synonymous with the term income as used in the Income-tax Act.

In the next place even if payment of road and public work cesses could be called expenditure for the purpose of earning the income, it is clear that it is not expenditure incurred solely for such purpose. In so far as the State in return for the payment of the cesses grants *inter-alia* to the assessee security for the enjoyment of his income the payment may be said to some extent to be made for the purpose of earning such income, but it cannot be said to be made solely for such purpose. It is for this reason that land-revenue, local rates and municipal taxes do not come under the exception provided in clause 2 (ix) of section 9 and special provision has been made for them in clause 2 (viii). No special provision has been made in respect of road and public works cesses and if the royalty receiver had been a person carrying on a business, he could not have claimed a deduction for them.

The same principle must apply to the case of an assessee whose income has to be computed under section 11, and these cesses cannot be deducted in his case also. A tax leviable as a condition precedent to the creation of the source of income, such as a licensee, would stand on a different footing, but that is not the case here. I agree, therefore, with the view taken by the learned Chief Justice.

Bucknill, J.,

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I agree generally. Cesses under the Cess Act, 1880, are admittedly leviable upon royalties received from the working of mines (see section 72), royalty received from mines is "income derived from other sources" section 5 (vi) Income-tax Act, 1918, and not "income derived from business." Such royalty is liable in respect of both income-tax and road-cess and public works cess.

In considering what is the income derived from business the word *income* means "profits of the business" (see section 9 (1)). How these profits are to be arrived at, section 9 (2) shows, and there are many deductions which may rightly be made from

what may be called the "gross receipts" before the figure of the profits properly assessable for income-tax is arrived at. But in the case of "income derived from other sources" the only abatement contemplated is the broad one expressed thus in sub-section (2) "such income and profits shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making such income or earning such profits." In this reference this is clearly a case concerning "income" and not profits." But even if royalty derived from mines could be regarded as falling within the phrase "income derived from business" under section 5 (iv), it does not appear that road or public works cess could be regarded as sums paid on account of land revenue, local rates or municipal taxes as contemplated under section 9 (2) as being capable of being deducted from gross receipts in order to arrive at the properly assessable profits which is the synonym for "income derived from business" as designed in section 5 (iv).

It is most difficult to see how in the case of "income derived from other sources" the assessment of which is regulated by section 11 and in which the abatement possible in arriving at the taxable income and profits is confined to a deduction of "any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making such income or earning such profits" it can be argued that "road or public works cesses" are *expenditure incurred at all* for the *purpose* of making income or earning profits.

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In my view the royalty receiver is liable to be assessed (a) for income-tax, (b) for road and public works cess on the same sum namely, the royalty payable to the royalty receiver by the lessees of the mines.

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CASE NO. 7.

MADRAS HIGH COURT, REFERRED CASE NO. 11 OF 1920.

The Chief Justice.—This reference raises questions as to the interpretation of a rule made by the Government of Madras under section 43 (2) (c) of the Indian Income-tax Act which enables it to "prescribe the manner in which and the mode by which the taxable income of persons not resident in British India or of persons deemed to be assessee in respect thereof, shall be arrived at." Such persons under section 33 are made liable to be taxed on profits or gains which are deemed to arise or accrue in India. Rule 1 provides that the profits in India for assessment purposes may be calculated on such percentage of the turnover of the business in India as the Collector may consider reasonable. Rule 2 with which we are concerned is as follows: "In cases in which the method of assessment on a percentage of turnover is inapplicable as for example—the case of an Indian Branch of a Foreign Insurance Company—the profits of the Indian Branch may be assumed for income-tax purposes to bear the same proportion to the total profits of the Company as its receipts bear to the total receipts." The question referred to us is whether or not in arriving at the "total profits" for the purposes of the rule Income-tax and Excess Profits Duty payable in England and Income-tax payable at stations outside British India are to be deducted. Mr. Aingar for the appellant has referred us to *Stevens v. Durban Roodeport, Gold Mining Company*, 100 L. T., 481, and to *certain dicta Scottish, etc., Insurance Company v. New Zealand Land Company*, 89 L. J. P. C., 220, and *Rover v. South African Breweries*, 1918, 2 ch., 288, which support the proposition that in England when profits arising abroad are liable under the English Income-tax Act to pay income-tax in England, a deduction is allowed in respect of the income or similar tax levied on such profits in the places where they arose; and if it were a question here of taxing under section 3(1) of the Act profits arising outside British India on the ground that they were received in British India, those authorities would be applicable, but in my opinion they have no application to the present case. What have to be ascertained are the assessable profits arising in British India of the Eastern Extension Australasia and China Telegraph Company which is incorporated in England and has branches in India and elsewhere. But for the rule in question those profits would be ascertained by taking the Indian receipts and debiting against them the expenditure necessary to earn them, and in such a calculation the amount of the tax itself would not be allowed as a deduction. The taxes levied locally on the assessable profits arising in other countries would not enter into the calculation at all. As, however, it would be difficult if not impracticable in the case of a business such as this to ascertain the expenditure properly debitable against the Indian receipts, the Government in the exercise of its statutory powers has provided that the assessable profits of the Indian branch without deduction of the Indian income-tax shall be deemed to bear the same proportion to the total assessable profits of the Company as the Indian

receipts bear to the total receipts. As the Indian assessable profits are to be ascertained without deduction of the local income-tax, it must necessarily be the intention of the rule that the total assessable profits of the business should be arrived at in the same way, viz., without the deduction of the several local income-taxes and excess profits taxes which are enhanced income-taxes. Otherwise the whole basis of comparison would be gone; and as observed in paragraph 5 of the order of reference, the opposite constructions would involve holding that the word "profits" was used in two different senses in the same rule. The answer to the reference must be that the deductions claimed are not allowable.

Oldfield, J. * * * * * It is impossible in accordance with the ordinary canons of construction to give to the word "profits" a different meaning in the two places, in which it occurs; and, as where it occurs first it is used statutorily of profits on which the tax has to be ascertained, that is of profits before they have been taxed; it must be similarly used where it occurs again and where its meaning is disputed. This entails acceptance of the argument for the Crown and, as it is not disputed that foreign Super-tax and income-tax stand on the same footing, an answer to the reference is that deductions claimed are inadmissible.

Kumarswamy Sastriar J. * * * * * The total profits of the company will be the profits made in British India and also outside British India and so far as the profits made in India are concerned, it is clear that income-tax paid during the previous year or likely to be assessed during the current year cannot be deducted. Section 9 of the Act which relates to income derived from business and which provides for the mode by which such income shall be computed specifies the deductions that can legally be made and it is clear that income-tax paid for the previous year cannot be deducted to arrive at an estimate of the profits on which income-tax is to be assessed.

In Ashton Gas Company v. Attorney General, 1906, A. C. P., 10, Lord Halsbury observed "Now the profit upon which the income-tax is charged is what is left after you have paid all the necessary expenses to earn the profit. Profit is a plain English word, that is what is charged with income tax. But if you confound what is the necessary expenditure to earn that profit with the income-tax which is a part of the profit itself, one can understand how you get into the confusion which has induced the learned counsel at such very considerable length to point out that this is not a charge on the profits at all. The answer is that it is. The income-tax is a charge on the profits; the thing that is charged is the profit that is made and you must ascertain what is the profit that is to be made before you deduct the tax. You have no right to deduct the income-tax before you ascertain what the profit really is." These observations have to be kept in mind in construing the word "profit" in the rule.

The rule in question merely provides the formula for ascertaining the income arising out of the business in British India which is so mixed up with the income arising out of business carried on outside British India that you cannot estimate it with mathematical accuracy. By the very nature of the case the rule is artificial and provides a rough and ready method of arriving at a taxable income. As there can be no deduction of the income-tax in arriving at the Indian assessable profits if the Indian income were attempted to be arrived at in the usual way, namely by taking the Indian receipts and deducting the expenditure necessary for the carrying on of the Indian business having regard to the provisions of section 9 of the Income-tax Act, it seems to me that the word "profit" cannot be used in two senses in the rule so as to exclude income-tax where one item of the total, namely Indian income is concerned and to include it as regards other items.

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There can be little doubt that as a matter of accountancy and book-keeping and as between share-holders entitled to a dividend and the company income-tax paid is always entered as an expense which has to be deducted before the amount divisible as profits can be ascertained and enters into the debit charges in the same way as any other item of expenditure. It is equally clear that for purposes of levying income-tax you cannot deduct the amount paid or payable as income-tax on the grounds that it is only what remains that goes to the persons carrying on the business. The fact that as between the share-holders and the company you would estimate profits in a particular way is no ground for estimating profits on which income-tax has to be calculated in a similar manner.

In enacting the rule in question for the purpose of ascertaining profits in India, I am of opinion that what was intended was that you must take the profits in each centre on which income-tax was charged or chargeable, total up such profits and estimate the profits in British India by ascertaining the ratio which the total receipts in India bear to the total receipts.

I would answer the question in the negative.

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